

BOERNE UNIFIED DEVELOPMENT CODE

Chapter 2: Procedures

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Table of Contents

2.1. GENERALLY	4
A. KNOWLEDGE OF DEADLINES THE RESPONSIBILITY OF THE APPLICANT	4
B. APPLICATION FEES	4
C. CONCURRENT PROCESSING	4
2.2. AMENDMENTS TO THE UNIFIED DEVELOPMENT CODE	6
A. GENERALLY	6
B. UDC AMENDMENTS THAT ARE NOT ZONING MAP AMENDMENTS	6
C. CRITERIA FOR APPROVAL	6
2.3. AMENDMENTS TO THE MASTER PLAN	7
A. PUBLIC INVOLVEMENT AND THE MASTER PLAN	7
B. ANNUAL REVIEW AND PLAN IMPLEMENTATION MONITORING	7
C. REVIEW SCHEDULE	7
D. BEFORE THE PLANNING AND ZONING COMMISSION	7
E. BEFORE THE CITY COUNCIL	8
2.4. PUBLIC NOTICE REQUIREMENTS	9
A. CONTENT	9
B. MAILED NOTICE	9
C. PUBLISHED NOTICE	9
D. POSTED NOTICE	9
E. CONSTRUCTIVE NOTICE	9
2.5. ZONING PROCEDURES	11
A. GENERALLY	11
B. ZONING OF NEWLY ANNEXED LAND	11
C. PROPERTY ZONING AND REZONING	12
D. SPECIAL USE PERMITS	24
2.6. BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY	31
A. REQUIREMENTS FOR OBTAINING A BUILDING PERMIT	31
B. CERTIFICATES OF OCCUPANCY	31
2.7. HISTORIC PRESERVATION	32
A. HISTORIC DISTRICT DESIGNATION	32
B. HISTORIC LANDMARKS AND BUILDINGS IN HISTORIC DISTRICTS	33
2.8. PLATTING PROCEDURE	44
A. GENERALLY	44
B. PRE-SUBMITTAL CONFERENCE	48
C. DEVELOPMENT PLANS	49
D. MINOR PLAT	53
E. SUBDIVISION PLAT	55
F. DEVELOPMENT PLATS	60

G.	CONVEYANCE PLATS	65
H.	RECORD PLAT	66
I.	SUBDIVISION PLAT AMENDMENT	67
J.	REPLAT	69
K.	PLAT VACATION	72
2.9.	CONSTRUCTION PROCEDURES.....	74
A.	CONSTRUCTION PERMITS	74
B.	CONSTRUCTION PROCEDURE	83
C.	DEDICATIONS AND ASSESSMENTS.....	91
D.	PERFORMANCE GUARANTEES	92
2.10.	SIGNAGE	94
A.	SIGN PERMIT	94
B.	NONCONFORMING SIGNS.....	96
C.	REMOVAL OF CERTAIN SIGNS.....	97
D.	SIGN VARIANCES	97
E.	APPEALS.....	98
F.	MASTER SIGN AGREEMENTS	99
2.11.	HOMEOWNERS ASSOCIATIONS	102
A.	APPLICABILITY.....	102
B.	ASSOCIATION AGREEMENTS	102
C.	MEMBERSHIP	102
D.	ASSOCIATION CONTACT INFORMATION	103
E.	LEGAL REQUIREMENTS	103
F.	GOVERNMENT ACCESS	104
G.	TRAFFIC ENFORCEMENT	104
H.	FAILURE TO MAINTAIN	104
I.	PROTECTIVE COVENANTS	104

2.1. GENERALLY

A. KNOWLEDGE OF DEADLINES THE RESPONSIBILITY OF THE APPLICANT

Knowledge of the expiration date and initiation of a request for extension of approval time is the responsibility of the applicant. The City shall not be held accountable for notification of expirations, although it may notify an applicant of date of expiration.

B. APPLICATION FEES

1. No application shall be reported as complete, and no notification of filing shall be given, unless all fees associated with the application have been received by the City.
2. The fees associated with zoning applications shall be submitted to City Manager.

C. CONCURRENT PROCESSING

1. When concurrent applications are accepted, the applications, though filed concurrently, shall be completed in accordance with the requirements for each individual application.
2. When applications and/or petitions are filed concurrently, the City Manager shall:
 - a. process the applications concurrently;
 - b. schedule the applications for the same Planning and Zoning Commission meeting date; and
 - c. schedule the applications for the same City Council meeting date

3. Concurrent Processing of Multiple Zoning Applications

An applicant may concurrently file multiple applications for zoning or rezoning of separate properties, if those properties are part of a single development that is under common ownership or control.

4. Concurrent Processing of Platting and Zoning Applications

- a. A preliminary or a final plat application may be filed concurrently with a zoning application for a property.

5. Concurrent Processing of Final Plat Application and Construction Release Permit Application

- a. An application for a Construction Release Permit may be filed concurrently with a Final Plat application, provided that:
- b. A preliminary plat has already been approved for the project

6. Annexation and Zoning

- a. All property which is annexed into the City is eligible for concurrent consideration of zoning classification.
- b. An applicant may file a zoning application concurrently with a petition for annexation. However, an annexation petition may not be conditioned upon the approval of any particular zoning classification.

7. Special Use Permits and Zoning

- a. An application for a Special Use Permit may, upon owner's discretion, be included as a part of an initial zoning application or a rezoning application, provided that all of the submittal requirements for the respective applications are met.

- b. A Special Use Permit may be granted as an amendment to an ongoing rezoning case before the Planning and Zoning Commission or City Council. Before granting the amendment, the City Council may issue a courtesy notice to affected parties of the proposed special use and will not require the applicant to submit a new application or pay additional fees other than for the difference (if any) between a conventional case and a special use permit case. Such amendment shall then be considered at the next regularly scheduled Planning and Zoning Commission meeting or, in the case of the City Council, at the next regularly scheduled meeting at which zoning cases will be considered.

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2.2. AMENDMENTS TO THE UNIFIED DEVELOPMENT CODE

A. GENERALLY

1. The City Council may establish rules governing times for submission and consideration of amendments to the Unified Development Code.
2. The UDC shall only be amended by ordinance. An ordinance prepared for submission to the council for an amendment to the Unified Development Code shall be in keeping with Sec. 1-10 of the City Charter.
3. The procedure for amending the zoning map is prescribed by 2.XX (*cf the section of this chapter addressing zoning amendments*).
4. Staff may make changes to correct errors in spelling, grammar and formatting without public notice and public hearing, and without City Council approval.

B. UDC AMENDMENTS THAT ARE NOT ZONING MAP AMENDMENTS

1. The City Council shall hear and decide any proposed amendment to the Unified Development Code. City Council may only amend the Unified Development Code after a public hearing, and after receiving a recommendation from Planning and Zoning Commission, as well as from Historic Landmark Commission, if their recommendation is required.
2. The Planning and Zoning Commission shall review any proposed amendment to the Unified Development Code. The Planning Commission shall hold a public hearing on the proposed amendment before making a recommendation to the City Council.
3. For a proposed amendment that affects historic districts, historic landmarks, certificates of appropriateness or community conservation districts^[CC1], review and recommendation by the Historic Landmark Commission is required. Historic Landmark Commission review shall occur before the Planning Commission's review of the proposed amendment. The Historic Landmark Commission shall forward its recommendation to the Planning Commission and to City Council.
4. Public hearings and notice of public hearings shall be in accordance with the requirements of this Chapter.

C. CRITERIA FOR APPROVAL

In determining whether to approve, approve with modifications or conditions, or disapprove amendments to this code, the City Council shall consider and make findings regarding the proposed amendment, using the following criteria:

1. The amendment is consistent with:
 - a. The City Charter
 - b. State and federal law
 - c. the City's master plan;
 - d. other plans and initiatives of the City;
 - e. regional planning initiatives, as applicable
2. The amendment enables the City to more effectively fulfill a stated purpose of the UDC; and
3. The amendment will improve city management or city governance

2.3. AMENDMENTS TO THE MASTER PLAN

A. PUBLIC INVOLVEMENT AND THE MASTER PLAN

1. The Master Plan is a reflection of the vision, goals and priorities of the community. As such, any updates or amendments to the plan, other than minor amendments, shall require a public outreach plan, accompanied by public meetings and public sharing of information prior to any updates or amendments.
2. Staff recommendations shall reflect and reference the input gathered through public outreach.

B. ANNUAL REVIEW AND PLAN IMPLEMENTATION MONITORING

1. Staff shall provide a review of the Master Plan to Planning and Zoning Commission every year, including:
 - a. Progress report on plan implementation;
 - b. Any conflicts, inconsistencies and items within the master plan that merit consideration for revision; and
 - c. Any proposed changes to the Future Land Use Map

C. REVIEW SCHEDULE

1. Complete Plan Revision
 - a. The City Manager shall initiate a full review and complete revision of the Master Plan at least once every 20 years.
2. Targeted Plan Review
 - a. 3-Year Review

The City Manager shall initiate a targeted review of the plan once every 3 years, focused on updates, rather than a full revision of the plan.
 - b. Off-Cycle Amendments to the Master Plan
 - i. In addition to the 3-year reviews described above, the City Manager may propose a plan amendment at any time in response to one of the following:
 - (a) Addition of new zoning categories or redefinition of zoning categories which render the master plan and zoning regulations out of alignment;
 - (b) Large-scale zoning map changes which are initiated by the City;
 - (c) Reference to or incorporation of another plan or policy document that impacts development in the City or its ETJ.
 - (d) Annexation of land that is not included in the Future Land Use Map of the Master Plan; or
 - (e) Changes to state or federal law where compliance with the law would require changes to the Master Plan.

D. BEFORE THE PLANNING AND ZONING COMMISSION

1. Review

All amendments to the Master Plan shall be reviewed by the Planning and Zoning Commission. The Planning and Zoning Commission shall make recommendation to City Council following a public hearing.

2. Notice and Public Hearing Required

No amendment, supplement, change, modification or repeal of any provision of the Master Plan shall become effective until after a public hearing in relation thereto before the Commission, in keeping with the public hearing and public notice requirements of this Chapter.

E. BEFORE THE CITY COUNCIL

1. Report by Planning and Zoning Commission

Following the public hearing to amend the Master Plan before the Planning and Zoning Commission, the Commission shall file its report on the matter with City Council as soon as possible.

2. Notice and Public Hearing Required

Following the receipt by City Council of the report of the Planning and Zoning Commission, City Council shall hold a public hearing on the matter at which parties in interest and citizens shall have an opportunity to be heard. Public hearings shall comply with the public hearing and public notice requirements of this Chapter.

3. Joint Hearings before Commission and Council

The City Manager may request expedited action by a request to proceed before the Planning and Zoning Commission and City Council at the same time. Following the conclusion of this joint public hearing, City Council may act on the matter without the necessity of a written report from the Planning and Zoning Commission.

4. Time Limitation

All amendments to the Master Plan which have been recommended favorably by the Planning and Zoning Commission shall be presented to the City Council within 60 days of the date of the Commission's recommendation.

2.4. PUBLIC NOTICE REQUIREMENTS

A. CONTENT

Notice of hearings required under this chapter shall, unless otherwise specified in this Code shall:

1. identify the date, time, and place of the hearing;
2. if applicable, describe the property involved in the application by street address, or by acreage and distance to the nearest cross street, or by legal description;
3. describe the nature, scope, and purpose of the proposed action;
4. indicate that interested parties may appear at the hearing and speak on the matter; and
5. indicate where additional information on the matter may be obtained.

B. MAILED NOTICE

When public notice is required, the Director shall deposit such notice into first class mail to property owners within 200 feet of the subject property, not less than 15 days prior to the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. Written notice shall be provided to all persons listed on the records of the municipal tax assessor as owners of land subject to the application or as owners of the parcels within 200 feet of the outer boundary of the land subject to the application at the mailing addresses of such persons in the records of the municipal tax assessor. Due to the "super majority" rule under Chapter 211 of the Texas Local Government Code, responses received after an imposed deadline for response shall not be counted in the record of response.

C. PUBLISHED NOTICE

When public notice is required, the Director shall cause a notice to be published in a newspaper of general circulation at least ten days prior to the scheduled meeting of the planning and zoning commission, and at least 15 days prior to the scheduled meeting of the city council. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

D. POSTED NOTICE

When public notice is required, the Applicant shall place a sign on the subject property at least ten days prior to the scheduled meeting of the decision-making body, and the sign shall remain until after the final scheduled meeting regarding the subject application. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall include all the content specified in paragraph a. above except for the legal description. Before the hearing, the applicant shall submit to the planning department an affidavit, signed by the person who did the posting or the person who caused the posting to be done, that notice was posted as required by this subsection. A picture of the zoning sign placed on the property shall be provided to the planning department for permanent record.

E. CONSTRUCTIVE NOTICE

1. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties.

2. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed.
3. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct city staff to make a formal finding as to whether there was substantial compliance with the notice requirements of this Code, and such finding shall be made available to the decision-making body prior to final action on the request.
4. When the records of the city document the publication, mailing, and posting of notices as required by this section, it shall be presumed that notice of a public hearing was given as required by this section.

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2.5. ZONING PROCEDURES

A. GENERALLY

1. Authority

- a. The provisions of this Section are adopted pursuant to Chapter 211 of the Texas Local Government Code and the City Charter.
- b. The zoning map of the City may from time to time be amended, supplemented, changed, modified, or repealed.

2. Property Zoning and Subsequent Development Approvals

- a. A plat shall not be granted to a property inside the corporate limits of the City that is not in compliance with the zoning classification of the property and its respective requirements.
- b. A construction permit shall not be granted to a property inside the corporate limits of the City that is not in compliance with the zoning classification and its respective requirements.
- c. A building permit shall not be granted to a property that is not in compliance with the zoning classification and its respective requirements.
- d. A certificate of occupancy shall not be granted to a property that is not in compliance with the zoning classification and its respective requirements.

3. Nonconformities

Nonconformities shall be decided in accordance with Section XX.XX Nonconformities of this Chapter. This includes nonconforming uses, sites and structures.

4. Variances

Zoning variances shall be decided in accordance with Section XX.XX Variances of this Chapter.

5. Appeals

Appeals of zoning decisions shall be in accordance with Section XX.XX Appeals of this Chapter.

B. ZONING OF NEWLY ANNEXED LAND

1. Annexed property shall be zoned in accordance with the procedures required by state law and this Section, as the initial zoning classification of a property.
2. Zoning of annexed land shall be in keeping with the Master Plan of the City, particularly the Future Land Use Plan.
3. Unless otherwise provided in this Section, annexed property is designated as a Development Reserve (DR) district from the date of annexation until the property is permanently zoned.
4. Annexed property that is subject to a development agreement shall be zoned by the City in accordance with the development agreement. Zoning classifications shall be applied upon revision of the official zoning map. For purposes of this Section, a "development agreement" means and refers to any agreement adopted pursuant to 43.0563, 42.046, or 43.127 of the Texas Local Government Code. The City may elect to include any of the terms of the development agreement in the zoning ordinance, following annexation.

5. Property that is included in an approved preliminary or final plat shall be zoned in accordance with that plat.
6. Concurrent processing of property annexation and zoning shall be in accordance with the requirements of this Chapter.

C. PROPERTY ZONING AND REZONING

1. Initiation of Property Zoning and Rezoning

- a. Filing
 - i. All petitions, applications, recommendations, or proposals for zoning shall be filed with the Planning Department.
- b. Zoning or Rezoning of a Property
 - i. The zoning or the rezoning of a property may be initiated by:
 - (a) City Council by its own motion;
 - (b) Planning and Zoning Commission by its own motion;
 - (c) For a historic landmark, a historic district, or a cultural conservation district, Historic Landmark Commission by its own motion;
 - (d) Recommendation of the Planning Director; or
 - (e) The owner or owner's agent by application. For a PUD, PDD or Cluster Development, the zoning amendment requires initiation by the owners of at least 51 percent of the land by land area, or at least 51 percent of the owners of individual properties in the proposed district.
 - ii. Property owned by the City of Boerne or another governmental entity shall be fully excluded from the area subject to petition by property owner(s).

2. Pre-Application Meeting

- a. A pre-application meeting with the Planning Department is required when the rezoning is initiated by the property owner or owner's agent.
- b. The pre-application meeting provides the applicant with information regarding the procedure and submittal requirements associated with the application, and with the opportunity to discuss the conceptual plan for the proposed development.
- c. The pre-application meeting shall be held at least 7 days prior to filing a zoning application.
- d. The Planning Department shall provide the applicant with the appropriate application form, which will detail the submittal requirements.
- e. The Planning Department shall present and review the application checklist with the applicant.
- f. Both the Planning Department and the applicant or his representative shall sign the application checklist. A signed application checklist shall be included in the zoning application as verification of participation in the pre-application meeting.
- g. The owner or developer is permitted to present a concept plan of the development associated with the zoning request to the Planning Department at the pre-application meeting.
- h. Eligible concurrent applications may be reviewed at the same pre-application meeting.
- i. Additional pre-application meeting requirements for a Planned Unit Development, a Planned Development District or a Cluster Development:

The applicant shall provide the City with a preliminary concept plan for the proposed development. The preliminary concept plan need not be engineered,

but it must contain at least the following information in sufficient detail to permit understanding of the proposal.

- i. A map of the site, drawn to scale and showing north point, the boundaries of the proposed development, adjacent subdivisions, and the streets in the vicinity of the site.
- ii. A map showing general topographic considerations affecting the site, floodplains and watercourses on the site and in the vicinity, and any other significant environmental features that may affect the site.
- iii. The general layout proposed for the proposed development, delineating the areas that are designated for residential development, the forms and densities proposed in each such area; the areas proposed for non-residential development, and the general nature of the uses proposed in each such area; and the areas proposed as community open space, and the general character proposed for each such area.
- iv. The total acreage of the site, the number of acres to be developed in each type of residential and non-residential development that is proposed, and the number of acres proposed to be dedicated as community open space.
- v. The total number of residential dwelling units of each type proposed, and the approximate gross square footage of each type of non-residential development proposed.

3. Submittal Requirements [CC2]

Applications for property zoning amendments shall include:

- a. Payment of required fees.

No application shall be deemed complete, and no notification of filing shall be given, unless and until all fees associated with the application have been received by the City.

- b. Letter of intent written by the owner or designated agent, indicating:
 - i. a description of the property
 - ii. the development intent and proposed use of the property;
 - iii. the name, address and phone number for the owner or designated agent; and
 - iv. the address of the subject property, if applicable.
- c. Certificate of agency or power of attorney if someone other than the owner is submitting the application.
- d. Names of all property owners, as shown on current tax records, within 200 feet of the subject property.
- e. Any and all covenants binding the property, including a map and legal description of the area(s) affected.
- f. Legal description and exhibit of the property showing the property boundary.
- g. Identification of all pending zoning applications for the property, including legislative and quasi-judicial applications, if any.
- h. All accompanying applications, if filing concurrently.
- i. Additional requirements for PUDs:
 - i. PUD Plan

The PUD plan for a proposed planned unit development must be drawn on reproducible Mylar by a registered architect or registered engineer and must include the following:

- (a) Date, scale, north point (with north to the top if possible), name of developer, and name of the person preparing the PUD plan.
- (b) The location of the City limit lines and the outer border of the City's extraterritorial jurisdiction if either traverses the Planned Unit Development or is contiguous to the PUD boundary.
- (c) The location, right-of-way width, name and description of all existing or recorded streets and alleys within or adjacent to the PUD, as determined from existing records, and the location of all intersections adjacent to the PUD.
- (d) The location, right-of-way, and type or purpose of all existing easements within and adjacent to the PUD.
- (e) The centerline of existing watercourses, creeks and drainage structures within and adjacent to the PUD, and the limits of the 25-year and 100-year flood plains, if applicable.
- (f) The centerline of proposed watercourses, creeks and drainage structures, and the general nature and extent of any other water features which are proposed to be developed.
- (g) The area and acreage in each distinct type of proposed land use.
- (h) The areas and acreages which are to be dedicated as community open space, including an indication whether the dedication is to be as a public park or as common area owned and managed by a community association.
- (i) The location, type and height of the fences, walls or other screening devices, which are proposed to buffer the PUD from adjacent developments and, within the PUD, to buffer one land use from another.
- (j) If more than one base zoning category is to be assigned, provide a map indicating assignment of base zoning categories to the parcels or tracts of the proposed project area.

ii. Accompanying Information

The information that is presented graphically in the PUD plan must be accompanied by the following information in narrative or tabular form:

- (a) The base zoning category to be assigned to the area(s) of the PUD.
- (b) The total number of dwelling units in each distinct type proposed, the total acreage in each distinct type of residential development or unit of development if the PUD shall be developed as separate units, and the resulting densities in dwelling units per net developable acre (total area minus dedicated rights of way).
- (c) The total acreage and gross square feet proposed in each distinct type of non-residential development.
- (d) Descriptions of the number, size and character of any active recreational facilities and community meeting spaces that are to be included in the community open space.
- (e) Calculations showing the minimum total area of community open space, which is required by this ordinance, and the actual areas, which are proposed to be dedicated as community, open space. A narrative justification must accompany any request for a reduction in the community open space requirement.

j. Additional requirements for PDDs:

i. PDD Plan

The PDD plan for a proposed planned development district shall be drawn on reproducible Mylar by a registered architect or registered engineer and must include the following:

- (a) Date, scale, north point (with north to the top if possible), name of developer, and name of the person preparing the PDD plan.
- (b) The location of the City limit lines and the outer border of the City's extraterritorial jurisdiction if either traverses the Planned Development District or is contiguous to the PDD boundary.
- (c) The location, right-of-way width, name and description of all existing or recorded streets and alleys within or adjacent to the PUD, as determined from existing records, and the location of all intersections adjacent to the PDD.
- (d) The location, right-of-way, and type or purpose of all existing easements within and adjacent to the PDD.
- (e) The centerline of existing watercourses, creeks and drainage structures within and adjacent to the PDD, and the limits of the 25-year and 100-year flood plains, if applicable.
- (f) The centerline of proposed watercourses, creeks and drainage structures, and the general nature and extent of any other water features which are proposed to be developed.
- (g) The area and acreage in each distinct type of proposed land use.
- (h) The areas and acreages, which are to be dedicated as community, open space, including an indication whether the dedication is to be as a public park or as common area owned and managed by a community association.
- (i) The location, type and height of the fences, walls or other screening devices, which are proposed to buffer the PDD from adjacent developments and, within the PDD, to buffer one land use from another.
- (j) If more than one base zoning category is to be assigned, provide a map indicating assignment of base zoning categories to the parcels or tracts of the proposed project area.

ii. Accompanying Information

The information that is presented graphically in the PDD plan must be accompanied by the following information in narrative or tabular form:

- (a) The base zoning category to be assigned to the area(s) of the PDD.
- (b) The total number of dwelling units in each distinct type proposed, the total acreage in each distinct type of residential development or unit of development if the PDD shall be developed as separate units, and the resulting densities in dwelling units per net developable acre (total area minus dedicated rights of way).
- (c) The total acreage and gross square feet proposed in each distinct type of non-residential development.
- (d) Descriptions of the number, size and character of any active recreational facilities and community meeting spaces that are to be included in the community open space.
- (e) Calculations showing the minimum total area of community open space, which is required by this ordinance, and the actual areas, which are proposed to be dedicated as community, open space. A narrative justification must accompany any request for a reduction in the community open space requirement.

k. Additional requirements for Cluster Development projects:

i. Cluster Development Plan

The cluster development plan for a proposed planned unit development must be drawn on reproducible mylar by a registered architect or registered engineer and must include the following:

- (a) Date, scale, north point (with north to the top if possible), name of developer, and name of the person preparing the cluster development plan.
- (b) The location of the city limit lines and the outer border of the city's extraterritorial jurisdiction if either traverses the planned unit development or is contiguous to the cluster development boundary.
- (c) The location, right-of-way width, name and description of all existing or recorded streets and alleys within or adjacent to the cluster development, as determined from existing records, and the location of all intersections adjacent to the cluster development.
- (d) The location, right-of-way, and type or purpose of all existing easements within and adjacent to the cluster development.
- (e) The centerline of existing watercourses, creeks and drainage structures within and adjacent to the cluster development, and the limits of the 25-year and 100-year flood plains, if applicable.
- (f) The centerline of proposed watercourses, creeks and drainage structures, and the general nature and extent of any other water features which are proposed to be developed.
- (g) The area and acreage in each distinct type of proposed land use.

ii. Accompanying information

The information that is presented graphically in the cluster development plan must be accompanied by the following information in narrative or tabular form:

- (a) Total acreage of land to be developed for residential lots.
- (b) Net density of the project, expressed as dwelling units per acre, calculated as total number of units divided by total number of acres.
- (c) Open space preservation plan, the vehicle to be used for preservation, such as a deed restriction, easement or dedication, and an indication of whether the dedication is to be as a public open space or as common area owned and managed by a community association.

4. Completeness Review

- a. No application shall be considered to be formally filed until the Planning Director determines that the application is complete.
- b. Review for completeness of applications is solely for the purpose of determining whether preliminary information required for submission with the application is sufficient to allow further processing and shall not constitute a decision as to whether the application complies with the provisions of the Chapter.

5. Staff Report

- a. The Planning Director shall prepare for the Planning and Zoning Commission and for City Council a report on each zoning application, including a recommendation.
- b. The Planning Director shall review the proposed zoning amendment in light of the Approval Criteria of this Section.
- c. The report shall be filed with the Planning and Zoning Commission not later than the 28th day after notice of application filing.

- d. A single report shall be prepared for concurrent applications.

6. Approval Criteria

- a. In making a determination regarding a proposed zoning amendment, City Staff, the Planning and Zoning Commission, the Historic Landmark Commission and the City Council shall consider the criteria of this section. No single factor shall be controlling in the decision-making process.
- b. Criteria for Approval of a Zoning Amendment:
 - i. The proposed zoning amendment is consistent with the Master plan;
 - ii. The proposed zoning amendment is consistent with a development agreement in effect;
 - iii. The proposed amendment will not prevent the use and enjoyment of a neighboring property that is currently exercising a permitted use;
 - iv. The City is able to adequately service the new use or new development with the needed streets, water supply, sanitary sewers, and other public services and utilities, or mitigation measures are in place to ensure the City's ability to adequately service the change in use of the subject property;
 - v. The proposed amendment will not inhibit the preservation and protection of, or negatively impact the view, accessibility or performance of historical or cultural places and areas that are of value to the community;
 - vi. The proposed amendment meets a significant, city-wide public need or purpose (affordable housing, economic development, etc.); and/or
 - vii. Any other factors which will substantially affect the public health, safety, morals, or general welfare of the City.
- c. Additional Criteria for Approving a Planned Unit Development (PUD)
 - i. The Planning and Zoning Commission may recommend and the Council may impose such conditions to the PUD regulations and Concept Plan as are necessary to assure that the intent of the PUD is implemented, and that the PUD does not have an adverse effect on the life, health, safety, economy and welfare of the City.
 - ii. To approve a PUD, the following criteria shall apply to the project and be clearly demonstrated in the application:
 - (a) The project size is less than 10 acres. Slight variations in total project area may be allowed if the property is characterized by documented conditions that significantly limit the development of the property, such as topography, floodplain, or preservation of historically significant uses or structures.
 - (b) The PUD is generally consistent with the densities, uses and traffic patterns of the surrounding area.
 - (c) The PUD relieves a community-wide concern or fulfills a community-wide objective.
 - (d) The PUD resolves or mitigates a compatibility issue with surrounding development, or adds a defined public benefit (employment, park facilities, improved accessibility, landscape preservation, soil conservation, stormwater management capacity, etc.), which, under base zoning, the site would not be able to provide.
- d. Additional Criteria for Approving a Planned Development District (PDD)
 - i. The Planning and Zoning Commission may recommend and the Council may impose such conditions to the PDD regulations and Concept Plan as are necessary to assure that the PDD district does not have an adverse effect on the life, health,

safety, economy and welfare of the City, particularly with regard to the impact of the proposed development on:

- (a) Health and welfare of the community at large (in terms of traffic, property values, safety, and community character);
- (b) Employment;
- (c) Economic development; and
- (d) Public utility systems, and the adequacy of the proposed mitigation measures

ii. Additional criteria for Planned Development Districts (PDDs):

- (a) development standards that achieve equal or greater consistency with the goals of the master plan than development under the standards of the associated base zoning district(s);
- (b) exclude detention or filtration areas from the open space calculation unless it is designed as an amenity;
- (c) consistent with applicable historic area and landmark regulations;
- (d) compatible with adjacent property and land uses;
- (e) exceed the City's requirements under the comparable base zoning classification(s) for at least one of the following:
 - (i) Storm water management
 - (ii) Energy efficiency (through voluntary LEED accreditation)
 - (iii) Tree preservation
 - (iv) Parkland dedication or open space amenity
- (f) provide for public facilities and services that are adequate to support the proposed development, including schools, fire protection, emergency services, and police facilities;
- (g) exceed the minimum landscaping requirements of the Code;
- (h) incorporate alternative transportation modes into the site design, such as bike paths and trails, that connect to areas adjacent to the proposed district;
- (i) demonstrate traffic mitigation measures beyond the minimums of the UDC

e. Additional Criteria for Approving a Cluster Development (CD)

- i. The Planning and Zoning Commission may recommend and the Council may impose such conditions to the CD regulations and Concept Plan as are necessary to assure that the CD district positively contributes to the life, health, safety, economy and/or welfare of the City, particularly with regard to:
 - (a) Access to the open space created by the development
 - (b) Means of dedication and maintenance of the open space
 - (c) Impervious cover in the project area
 - (d) Access/egress for public safety
- ii. Requirements for all Cluster Developments (CD):
 - (a) demonstrate development standards that achieve equal or greater consistency with the goals of the master plan than development under the standards of the associated base zoning district(s);
 - (b) maintain a gross residential density that is comparable with either surrounding neighborhoods or with the underlying zoning of the property;
 - (c) exclude detention or filtration areas from the open space calculation;
 - (d) be consistent with applicable historic area and landmark regulations;
 - (e) be compatible with adjacent land uses;

- (f) provide for public facilities and services that are adequate to support the proposed development, including school, fire protection, emergency service, and police facilities;
- (g) exceed the minimum landscaping requirements of the Code;
- (h) provide for alternative transportation modes, such as bike paths and trails, that connect to areas adjacent to the proposed district;
- (i) protect, enhance and preserve structures or sites that are of architectural, historical, archaeological, or cultural significance;
- (j) exceed the City's requirements under the comparable base zoning classification(s) for at least two of the following:
 - (i) Storm water management
 - (ii) Energy efficiency (through voluntary LEED accreditation)
 - (iii) Tree preservation
 - (iv) Parkland dedication or open space amenity

7. Public Hearings and Decisions

- a. The Planning and Zoning Commission and the City Council shall hear applications for all amendments to the zoning of a property.
- b. Public hearings for zoning amendments shall be legislative hearings.
- c. Notice of Public Hearings

Notice required for a public hearing before the Planning and Zoning Commission or the City Council shall be in accordance with the requirements for public notice established by this Chapter.

d. P&Z Hearing and Recommendation

- i. The Planning and Zoning Commission shall hold a public hearing on an application for a zoning amendment not later than thirty days after the date the application is filed.
- ii. The Planning and Zoning Commission shall make a recommendation to City Council on the application not later than the 14th day after the Commission closes the public hearing on the application.
- iii. The Planning and Zoning Commissions may recommend that the Council:
 - (a) Approves the application as proposed
 - (b) Approves a more restrictive zoning classification than what is requested in the application
 - (c) Approves the proposed classification subject to conditions
 - (d) Denies the application
- iv. If the Planning and Zoning Commission does not provide a recommendation on the application, the City Manager shall forward the application to City Council without a recommendation from the Commission.
- v. If the Commission does not hold a public hearing in accordance with the requirements of this Code, the applicant may file a written request with the City Manager for a hearing with the Commission.

e. Council Hearing and Action

- i. City Council shall hold a public hearing on an application for a zoning classification not later than the forty-fifth day after the date of the recommendation of the Planning and Zoning Commission.
- ii. Postponement requests

- (a) A postponement of the public hearing on an application for zoning classification may be granted upon request. A request for postponement may be made by any of these parties:
 - (i) The applicant
 - (ii) Staff
 - (iii) A party in opposition to the application
 - (b) A postponement shall be written and submitted to the City Manager not later than the seventh day before the scheduled public hearing.
 - (c) The request shall specify the reasons for the postponement.
 - (d) The City Manager shall provide a recommendation regarding the postponement.
 - (e) If the postponement is granted, the City Secretary shall enter the postponement in the minutes, with a notation of the identity of the party requesting the postponement.
 - (f) The Council shall set the time and date of the new hearing at the time the postponement is granted.
- iii. After a public hearing on the application for zoning classification, Council may:
- (a) Approve the zoning as requested;
 - (b) Approve a more restrictive zoning classification;
 - (c) Approve the requested classification subject to conditions; or
 - (d) Deny the proposed zoning classification.
- f. Requirements for Approval by Three-fourths Vote

The affirmative vote of three-fourths of the members of the City Council is required for approval of a proposed zoning amendment if:

- i. The Planning and Zoning Commission recommends denial of an application for zoning classification; or
- ii. The proposed zoning classification is protested in writing by the owners of at least 20% of the area of land that is either Included in the proposed zoning classification or immediately adjoining the area included in the proposed zoning classification and extending 200 feet from that area. In computing the percentage of land area, the area of streets and alleys shall be included in the computation.
- iii. Written protests must be received by the City Manager no later than 4:00 p.m. of the previous business day prior to the posted date and time for the zoning hearing on the city council's agenda.
- iv. If the written protests appear to be at least twenty (20) percent of either the area of the lots or land covered by the proposed change or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred (200) feet there from the applicant shall be entitled to, but is not required to request an automatic continuance if all members of the City Council are not present.

8. Recording Procedure

- a. The ordinance amending the zoning of real property shall be filed in accordance with the City's recording and filing procedures for Ordinances in the Charter.
- b. When the zoning classification involves changes to the existing zoning district boundaries, the form of the amending ordinance shall contain a narrative

- description of the land to be reclassified or reference to an accompanying plat of such land showing the new zoning classifications and indicating their boundaries.
- c. The attested ordinance shall serve as a record of the current zoning status until such time as the zoning map can be changed.

9. Appeals

a. Applicability

Any person, including any officer or agency of the city, that is aggrieved by a final decision relating to a zoning approval may appeal such final determination to the Board of Adjustment.

b. Notice of Appeal

A notice of appeal shall be filed with the Board of Adjustment within the time prescribed by the Board, pursuant to 211.010(b) of the Texas Local Government Code.

c. Time Limit

The appellate body shall hear and decide the appeal within sixty days of the filing.

10. Subsequent Applications

- a. The provisions of this subsection do not apply to any zoning application that is initiated by the City Council.
- b. Applications recommended by Planning and Zoning Commission

For six months from the date a zoning application for a property is withdrawn, an applicant may not file a zoning application of the same type for the property or a portion of the property if the withdrawn or denied application was recommended by Planning and Zoning Commission.

c. Applications not recommended by Planning and Zoning Commission

For twelve months from the date on which a zoning application is withdrawn or denied for a property, an applicant may not file a zoning application of the same type for the property or a portion of the property if the withdrawn or denied application was not recommended by Planning and Zoning Commission.

11. Subsequent Amendments

- a. Any subsequent map changes that would consist of a rezoning of a property shall require a new application and shall be processed as such.
- b. Minor Amendments
 - i. Minor amendments are administrative amendments.
 - ii. The following are considered minor amendments:
 - (a) Corrections in spelling, distances and labeling
 - (b) Changes in building position or layout that are less than ten feet or ten percent of the total authorized building area, provided the modification conforms to the Code.
 - (c) Changes in the proposed property lines, provided the original total project acreage is not exceeded, and the area of any zoning district is not changed by more than five percent.

- (d) Changes in parking layout, provided the modified layout conforms to the standards of the Unified Development Code.

c. Subsequent Major Amendments

- i. Any subsequent amendment which is not classified as a minor amendment is considered a major amendment.
- ii. Furthermore, a major amendment to a Planned Unit Development, a Planned Development District or a Cluster Development is any of the following, and shall require initiation of a new application:
 - (a) A change that would add a land use other than parks or open spaces that was not previously approved as part of the PUD, PDD or CD.
 - (b) A change that would alter the land use in an area within 200 feet of a boundary of the project area.
 - (c) A change that would increase the overall density of the project area by 10 percent or more.
 - (d) A change that would reduce the total area to be dedicated as community open space, or that would alter the location of that area by 10 percent or more.
 - (e) Any other change which, in the judgment of the Planning Director, would significantly alter the general character or overall design of the subdivision.
- iii. Unless expressly prohibited in the development agreement, major amendments to only one tract or phase of a Planned Development District, a Planned Unit Development or a Cluster Development shall require initiation of a new zoning application for that particular tract or phase. The remainder of the project area shall not be considered subject to a major amendment. Any future major amendments beyond that of the one tract shall require initiation of a new application and shall be processed as such.

12. Scope of Approval

- a. The granting of a Zoning Amendment does not authorize the development of land.
- b. A zoning approval defines the uses approved for the property and the standards that will apply to all development of that property.
- c. A zoning approval does not supersede any requirement for subdivision plat approval by the City.

13. Expiration of Approval

- a. For zoning and rezoning of a property not involving a PUD, a PDD or a Cluster Development, once approved, the plan, uses, development standards, and any added terms and/or provisions of the approved zoning amendment shall not expire unless the property is rezoned to a district other than that which was approved.
- b. Expiration of a PUD, PDD or Cluster Development
 - i. An approved PUD plan shall lapse and be of no further force and effect if a final subdivision plat is not submitted for approval by the Planning and Zoning Commission within three years of the date of approval of the PUD plan by City Council.
 - ii. Upon application by the developer, the Planning and Zoning Commission may grant one extension of this time limit of up to two years if the Commission finds that the additional time is warranted.
 - iii. A developer's failure to initiate development by filing a final subdivision plat within the approved time period shall void the PUD plan, and no building permits shall be issued and no utility connections shall be made until a new or revised

PUD plan has been resubmitted and approved, as provided by the Zoning Chapter.

- iv. In the case of a PUD subdivision which is divided into stages, each stage following the first stage to be developed must be initiated by the submission to the City Manager of a final subdivision plat for that stage, and approved by the Planning and Zoning Commission, within three years of the date of approval by the Commission of the final subdivision plat for the previous stage.
- v. Failure to initiate development of a second or later stage within this time period shall void the PUD plan with respect to the undeveloped stages, but development may continue in previously initiated stages.

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C. SPECIAL USE PERMITS

1. Purpose and Applicability

A Special Use Permit (SUP) allows for certain uses that are not permitted in a particular base zoning category by right, but which may be permitted under certain circumstances and application of certain conditions. SUPs require individual, discretionary review of location, design, configuration and operation in order to demonstrate compatibility with neighboring uses, adequate mitigation or resolution of negative impact, consistency with the master plan, and adequate offsets of any disproportionate burden upon the public infrastructure systems of the City. Permitting special uses is a quasi-judicial process.

2. Initiation

An owner of real property, or that owner's authorized representative, may initiate a SUP for that property by filing an application with the Planning Department. The SUP request may, upon owner's discretion, be included as a part of an overall zoning or rezoning application, provided that all of the requirements of this section are met.

3. Pre-Submittal Meeting

The owner or owner's authorized representative shall meet with Planning Director prior to submittal of the SUP application. At this pre-submittal meeting, the owner will present a preliminary, non-binding plan (conceptual or sketch plan) to the Planning Director, for discussion purposes only. The official will provide the owner or owner's authorized representative with a checklist of submittal requirements for the SUP application, included impact mitigation factors that should be addressed. The particular requirements for impact mitigation will depend on the special use being proposed, the scale of the project, and the location of the property in question.

4. Applications[CC3]

a. Application Fee

The applicant shall be required to pay a fee according to the master fee schedule maintained by the City.

b. Application Contents

i. General Content Required for All Zoning Applications

The SUP application shall be presented as a binder with content organized into the sections defined for all zoning applications.

- ii. Project Checklist, provided at the pre-submittal meeting
- iii. Letter of Justification

The applicant shall include in the SUP Application, in accordance with the SUP Application Checklist, a Letter of Justification that describes the proposed project. The letter should be a summary of application content, and should include, at a minimum:

- (a) Project owner and/or developer
- (b) Project description

- (c) Benefits of the proposed project to neighboring properties and to the community at large
- (d) Description of consistency with the master plan
- (e) Description of consistency with the other master plans of the City, including thoroughfares, utilities, parks and economic development
- (f) Measures taken to ensure compatibility of the proposed project with surrounding (existing) uses

iv. Development Impact

- (a) Each SUP application shall also include information indicating how potential impacts of the requested special use will be addressed, according to the particular land use district in which the property is located, in order to promote the character, intent and right of use of neighboring properties. These potential impacts will be identified during the pre-submittal meeting and provided as a part of the checklist of application requirements and will be included in the application. For more information, see the SUP Application Checklist.
- (b) The potential impacts of special use projects on neighboring properties will be selected from the list of factors below and identified on the submittal checklist that the applicant receives from the City at the pre-submittal conference. It is the property owner's responsibility to demonstrate adequate treatment of these issues either through design or operation of the proposed special use. Council reserves the right to accept, reject, or require modification to any measures proposed in the application.
 - (i) Community safety
 - (ii) Traffic
 - (iii) Parking
 - (iv) Loading
 - (v) Driveways
 - (vi) Front yard setbacks
 - (vii) Access and curb cuts
 - (viii) Development density (could include footprint, height, people dwelling onsite, or other factors)
 - (ix) Hours of operation
 - (x) Property values
 - (xi) Viewshed protection
 - (xii) Impervious cover
 - (xiii) Noise
 - (xiv) Light
 - (xv) Vibration
 - (xvi) Hazardous materials
 - (xvii) Flammable materials
 - (xviii) Special solid waste disposal requirements
 - (xix) Discharge/water contamination
 - (xx) Other

c. Application copies

In the SUP Application Checklist, the Planning Director shall identify the number of printed copies of the SUP application, as well as any large-scale prints that will be required as a part of the submittal. In addition to these printed documents, a digital copy of the application in its entirety will also be required as a part of the submittal package.

5. Completeness Review

The Planning Director shall review the application for completeness. When the Planning Director has deemed the application complete, it shall be referred to the Planning and Zoning Commission for review and recommendation, then to the City Council for review and decision. An application shall not be deemed complete until it meets all requirements for application submittal, as identified in the checklist provided at the pre-submittal meeting.

6. Criteria for Approval

- a. Planning and Zoning Commission may recommend, and City Council may approve the application for a Special Use Permit if:
 - i. the proposed special use is determined to comply with all applicable requirements of the Code and with adopted plans and policies of the City;
 - ii. the application demonstrates adequate mitigation of those potential impacts identified in the application checklist provided at the pre-application conference; and
 - iii. the following general criteria are adequately met:
 - (a) The use complies with the purpose and intent of the zoning classification of the property, as well as any applicable supplemental regulations as required by Council.
 - (b) The use shall conform to the purpose, intent and general development criteria of the land use district in which it is located, according to the Future Land Use Plan.
 - (c) The establishment, maintenance, or operation of the proposed use shall not endanger or be detrimental to the public health, safety, morals, comfort, or general welfare of the community.
 - (d) The use shall have no more adverse effects on health, safety, or comfort of persons living or working in neighboring properties or shall be no more injurious to neighboring properties than would any other use generally permitted under the same categorical zoning designation.
 - (e) The use will not result in traffic volumes or circulation patterns that exceed the capacity of streets and intersections likely to be used by traffic to and from the proposed development without approved mitigation of impact;
 - (f) The proposed use shall not create detrimental visual impacts on the surrounding built environment, including public streets and spaces, by the size, design or bulk of proposed improvements.
 - (g) The proposed use shall not injure the use and enjoyment of the property in the immediate vicinity for the purposes already permitted nor substantially diminish or impair the property values within the neighborhood.
 - (h) The proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted therein.
 - (i) The use will not create detrimental operational impacts, through hours of operation, management of traffic, servicing and loading operations, and any on-site operations associated with the ongoing functions of the use on the site, on neighboring properties.
 - (j) The use will not create detrimental health and safety impacts, such as noise, emissions, or vibrations, through functions within the proposed site.
 - (k) The use will not create detrimental impacts on the potential for future development of neighboring properties; and
 - (l) The use will not create detrimental impacts on property values.

- (m) The public interest and welfare supporting the use shall be sufficient to outweigh the individual interests that are adversely affected by the establishment of the proposed use.

7. Public Hearings and Decisions

- a. The Planning and Zoning Commission and the City Council shall hear applications for Special Use Permits.
- b. Public hearings on applications for Special Use Permits shall be quasi-judicial hearings.
- c. Notice of Public Hearings

Notice required for a public hearing before the Planning and Zoning Commission or the City Council shall be in accordance with the requirements for public notice established by this Chapter.

- d. Hearing and Recommendation by the Planning and Zoning Commission

The Planning and Zoning Commission shall hold a public hearing on the Special Use Permit application within thirty (30) days of receipt of the application from Planning Director. After the public hearing, the Commission shall recommend to approve, approve with conditions, approve in part, deny or deny in part the application. Where the Commission fails to render its decision within the period required by this subsection, or fails to hold the required public hearing within thirty (30) days from the date of receipt of the completed application, the decision shall be deemed to have been rendered in denial of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision had been rendered in denial due to failure of the Commission to meet or render a decision as hereinabove provided, the City shall give public notice of said decision within ten (10) days of expiration of the thirty-day period. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal for reconsideration.

- e. Negative Recommendation of Planning and Zoning Commission

If the Planning and Zoning Commission recommends denial of a Special Use Permit application, the permit application shall require approval by a three-fourths vote by City Council.

- f. Hearing and Action by City Council

City Council shall hold a public hearing on the Special Use Permit application within forty-five (45) days of the Planning and Zoning Commission's action on the application. After the public hearing, Council shall act to approve, approve with conditions, approve in part, deny or deny in part the application, within forty-five (45) days of the council hearing. In taking action, the City Council shall consider the criteria for approving a Special Use Permit. Where Council fails to render its decision within the period specified by this subsection, or fails to hold the required public hearing within forty-five (45) days from the date of the decision of the Planning and Zoning Commission, the decision shall be deemed to have been rendered in denial of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision is rendered in denial of the applicant because of the failure of Council to meet or render a decision as hereinabove provided, the Planning Director shall give public notice of said decision within ten (10) days of expiration of the forty-five (45) days following the council hearing. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal for reconsideration.

- g. Requirements for Approval by Three-fourths Vote

- i. The affirmative vote of three-fourths of the members of the City Council is required for approval of a proposed Special Use Permit if:
 - (a) The Planning and Zoning Commission recommends denial of an application for the permit; or
 - (b) The proposed special use is protested in writing by the owners of at least 20% of the area of land that is either Included in the proposed zoning classification or immediately adjoining the area included in the proposed zoning classification and extending 200 feet from that area. In computing the percentage of land area, the area of streets and alleys shall be included in the computation.
- ii. Written protests must be received by the City Manager no later than 4:00 p.m. of the previous business day prior to the posted date and time for the zoning hearing on the city council's agenda.
- iii. If the written protests appear to be at least twenty (20) percent of either the area of the lots or land covered by the proposed special use or the area of the lots or land immediately adjoining the area covered by the proposed special use and extending two hundred (200) feet there from the applicant shall be entitled to, but is not required to request an automatic continuance if all members of the City Council are not present.

8. Appeals

- a. The applicant or other interested person may appeal the decision of the City Council to the Board of Adjustment within 10 business days from the date on which the decision was made. Said appeal shall be in writing and filed with the Planning Director upon forms provided by the Planning Department. The appeal shall specify that the decision of the Council was in error and identify the facts and circumstances on which the claim of error is based. If an appeal is filed within the time limit specified, it automatically stays proceedings in the matter until a determination is made by the Board of Adjustment. Where an application is neither approved nor denied by the City Council due to a failure to achieve the required vote, the applicant shall have the right to a rehearing at the next Council meeting, with an opportunity to appeal the decision of the rehearing to the Board of Adjustment.
- b. Upon filing of the appeal, the Planning Director shall set the matter for public hearing, giving the same notice as required for public notices, as established by this Chapter. The matter shall be placed on the Board of Adjustment agenda and heard within 30 days of receipt of a valid application for appeal. The Planning Director shall send the Planning Department a duplicate copy of the appeal and request the Planning and Zoning Commission and City Council to transmit to the Board of Adjustment a copy of the respective decision and findings, minutes of the hearings and all other evidence, maps, papers and exhibits upon which the decision was made.
- c. Upon the hearing of such appeal, the Board of Adjustment may, by resolution, affirm, reverse or modify in whole or in part any determination of the City Council, subject to the same limitations and requirements of findings as are placed upon the Council for the award of a Special Use Permit. The resolution must contain a finding of facts showing wherein the special use meets or fails to meet the requirements of the Code. The decision by the Board of Adjustment on the appeal is final. Not later than 10 business days following the adoption of said resolution, the Planning Director shall transmit a copy of the resolution and finding to the Planning Director and shall mail a copy to the applicant.

9. Subsequent Applications

- a. When an application has been withdrawn

An application for a SUP may be withdrawn at any time. If the application has been advertised in compliance with State Law, an application requesting substantially the same use on all or part of the same described land shall not be reconsidered within one year of withdrawal. No application for a SUP for any lot or parcel that requests the same use and same conditions shall be considered within one year of a final decision denying the application.

b. When an application has been denied

In the event that the City Council denies an application for a Special Use Permit, a similar application shall not be refiled unless the Planning and Zoning Commission, upon petition by the applicant, determines that significant physical, economic or land use changes have taken place within the immediate vicinity, or a significant zoning regulation text change has been adopted, or when the reapplication is for a different use than the original request. The applicant shall submit a statement in detail setting out those changes which he or she deems significant and upon which he or she relies for refileing the application.

10. Scope of Approval

- a. Once a SUP has been granted, the approved use may only be enlarged, extended, increased in intensity or relocated under the conditions of a major or minor amendment, unless, in approving the initial application for a SUP the City specifically established an alternative procedure for future expansion or enlargement. The provisions for nonconforming uses and vested rights do not supersede this requirement, unless the specially permitted use is no longer a use permitted by right or as a special use in the assigned zoning category.
- b. The terms of approval shall be set by City Council. Unless otherwise indicated by City Council, Special Use Permits are granted to the property, and not to the landowner. Therefore, the Permit shall be transferable upon sale.

11. Expiration of Approval of Special Use Permits

- a. A Special Use Permit shall automatically lapse and become null and void if:
 - i. the applicant fails to satisfy any condition that was imposed as part of the approval of the SUP or that was made under the terms of any development agreement, within the time limits established for satisfaction of such condition or term.
 - ii. the applicant fails to submit a subsequent development application required by the Code within the time so required. If no time limit for satisfaction of conditions is specified in the decision on the development application, the time shall be presumed to be one year from the date the decision was made.
 - iii. the Special Use involves physical improvements that have not been substantially initiated within one (1) year of the date of approval or authorization approval of the SUP.
 - iv. after starting construction, the construction is discontinued for a period of one (1) year or more.
 - v. No physical improvements are made, and a Certificate of Occupancy is not issued for the Special Use within one (1) year of the date of approval or authorization.
- b. Effect of Expiration
 - i. No Certificate of Occupancy shall be issued after approval lapses unless the approval or authorization is renewed.
 - ii. No physical improvements shall be made after approval lapses unless the approval or authorization is renewed.

- iii. Upon the expiration of a SUP, all previously approved permits for the same land also shall expire on the expiration date if (1) the expired permit is subordinate to such previously approved permits and (2) the filing of an application for or approval of the expired permit was required to avoid expiration for the previously approved permit or permits. Thereafter, a new application for each permit deemed expired under this Section must be approved subject to regulations in effect at the time the new application is accepted for filing.

c. Renewal after lapse

The City Council may renew its approval of a SUP for which approval has lapsed, provided that no more than one (1) year has elapsed since the date of expiration of the original approval or, in the case of discontinuance of work, since the date of discontinuance. Renewal shall require formal action, but it shall not require public notice or hearings. Renewal shall have the same effect as the original approval. If no renewal is granted with the one-year period allowed for renewals, the original approval shall be void and no further effect. Occupancy Permits shall be automatically renewed coincidentally with and for the same time periods and limitations as prescribed for SUP renewals.

12. Minor SUP Amendments

A SUP amendment is a request for any enlargement, expansion, increase in intensity, relocation, or modification of any condition of a previously approved and currently valid SUP. Amendments shall be processed as follows: shifts in on-site location and changes in size, shape, intensity, or configuration of less than 5 percent, or a 5 percent or less increase in either impervious surface or floor area over what was originally approved, may be authorized by the Planning Director, provided that such minor changes comply with the following criteria:

- a. No previous minor modification has been granted pursuant to this section;
- b. There will be no detrimental impact on any adjacent property caused by significant change in the appearance or use of the property or any other contributing factor;
- c. Nothing in the currently valid SUP precludes or otherwise limits such expansion or enlargement; and
- d. The proposal conforms to all applicable requirements of Title XV and is in keeping with the spirit and intent of the master plan.

13. Major SUP Amendments

All amendments, other than those amendments provided for in this Section, shall be considered major SUP amendments and shall require approval in the same manner and under the same procedures as are applicable to the issuance of the original SUP approval.

14. Recording Procedures

A certified copy of all resolutions authorizing a special use pursuant to this section shall be recorded at the expense of the applicant, in the name of the property owner as grantor, in the office of the county clerk.

2.6. BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY

A. REQUIREMENTS FOR OBTAINING A BUILDING PERMIT

1. No person shall commence the construction, enlargement, or structural alteration of any building in the City, or use or occupy of the same, without first applying for and obtaining both of these from the Chief Building Official:
 - a. a building permit
 - b. a certificate of occupancy
2. No permit for the construction of a building upon any tract or plot shall be issued unless the plot or tract is part of the plat of record, properly approved as required herein, and filed in the plat records of Kendall County, Texas.
3. No permit for construction of a building upon any tract shall be issued unless a site plan, landscape plan, facade plan, and tree survey/preservation plan, if such is required, has been approved.

B. CERTIFICATES OF OCCUPANCY

1. Certificate Required.
 - a. No land shall be occupied or used and no building or structure hereafter erected, structurally altered, or extended shall be used, occupied, or changed in use until a certificate of occupancy has been issued by the City, stating that the building or structure and proposed use thereof complies with the provisions of the UDC and with the other building laws of the City.
 - b. The provisions of this section do not apply to single-family detached or duplex dwellings.
2. No nonconforming use shall be renewed, changed in use or extended without a certificate of occupancy having first been issued by the City Manager.
3. A certificate of occupancy shall be issued within 10 days of the completion of the erection, alteration or conversion of the building or land, provided such construction or change has been made in complete conformity to the provisions of the UDC, and with the approval of the City.
4. A certificate of occupancy shall not be issued until the landscaping requirements of the UDC have been satisfied.
5. A certificate of occupancy shall state that the *building* or proposed use of a *building* or land complies with all the *building* and health laws and ordinances and with the provisions of the regulations of the UDC.
6. The City Manager shall keep a record of all certificates of occupancy, and this record shall be available for inspection by the public.

2.7. HISTORIC PRESERVATION

A. HISTORIC DISTRICT DESIGNATION

1. Before the Landmark Commission

- a. Any proposal to designate an area of the city as an historic district shall be reviewed by the Landmark Commission.
- b. Before considering such designation, the Landmark Commission shall hold a public hearing on the matter.
- c. Notice of the hearing shall be mailed at least 10 days before the hearing date to the owners of all real property in the area proposed to be included in the district according to the most recent city tax roll.
- d. Following the hearing, the Landmark Commission shall recommend to the Planning and Zoning Commission those areas, if any, which it determines should be included in an historic district.
- e. In making this recommendation, the Landmark Commission shall consider the following criteria:
 - i. Character, interest or value as part of the development, heritage or cultural characteristics of the city.
 - ii. Location as the site of an historical event.
 - iii. Embodiment of distinguishing characteristics of an architectural type or specimen.
 - iv. Relationship to other distinctive buildings, sites, districts or structures which are historically significant and preserved, or which are eligible for preservation.
 - v. Unique location or singular physical characteristics representing an established and familiar visual feature of a neighborhood, a community, or the city.
 - vi. Value as an aspect of community sentiment or public pride.
 - vii. Identification with a person or persons who significantly contributed to the development or culture of the city. The Landmark Commission's report to the Planning and Zoning Commission shall include the following information:
 - (a) A list of specific buildings, structures, areas or lands of importance or value within the proposed district boundaries and a description of how the particular building, structure, site, area or land meets the aforementioned criteria.
 - (b) A map showing the boundaries of the proposed historic district or districts.

2. Before the Planning and Zoning Commission

- a. The Planning and Zoning Commission shall consider the recommendation of the Landmark Commission and make its own recommendation to the City Council.
- b. Before adopting a recommendation, the Planning and Zoning Commission shall give published and mailed notice to property owners in the area of the proposed historic district and shall hold a public hearing on the proposal in the same manner as required for the consideration of a change of zoning use district boundaries.
- c. The Planning and Zoning Commission shall include in its report to the City Council any information requested to be included by the Landmark Commission.

3. Before City Council

The City Council shall act on the recommendation from the Planning and Zoning Commission, following the same procedures, including notice and public hearing, as required for a change of zoning use district.

4. Modification of District Boundaries

Any proposal to modify the boundaries of a designated historic district, either adding area to the district or removing area from the district, shall be treated in the same manner as an original proposal to designate the area proposed to be added and/or removed as an historic district.

5. Appeals

- a. Any applicant aggrieved by a decision of the Landmark Commission may, within 60 days of the date of notice of the Commission's decision, appeal the decision to the City Council.
- b. A complaint by any person concerning the sufficiency of notice, economic impact, reasonableness or public necessity as to any rule or regulation, and any complaint concerning substantive or procedural due process, equal protection and equal application of the provisions of this ordinance, or correct interpretation of this ordinance, shall be presented to the Landmark Commission in the first instance, and shall be presented to the City Council by way of an appeal.
- c. Any such complaint shall be specified in writing and filed with the appropriate official before or during the meeting where the agenda item is heard.
- d. No decision of the Landmark Commission or the Council is final for purposes of judicial review until such notice of a complaint shall have been given, and the Landmark Commission, the Planning and Zoning Commission, or the City Council shall have had a reasonable opportunity to evaluate, reconsider, and apply the provisions of this ordinance.
- e. This provision is intended to ensure that due process is fully extended to the property owner and to the community.

B. HISTORIC LANDMARKS AND BUILDINGS IN HISTORIC DISTRICTS

1. Landmark Commission Assistance to Owners

The Landmark Commission shall provide information and counseling upon request to the owners of designated historic landmarks, of properties which may be eligible for designation as historic landmarks, and of included structures within historic districts, so that the historic heritage of the city may be preserved and the purposes of this Article achieved.

2. Submittal Requirements for Historic Landmark Commission Review

a. Procedures for Submission

In submitting a request to build, remodel or create an addition for consideration by the Historic Landmark Commission, the owner or their representative shall deliver the following to the City Manager at least 10 calendar days prior to the date the plat is to be considered by the Commission:

- i. 12 copies of the proposed north, south, east and west elevations (scaled drawings should be prepared)
- ii. 12 copies of the proposed site plan that depicts as-built and proposed building locations.
- iii. At the meeting provide a representative sample of the exterior materials (brick, stone, roofing materials, etc.), if the exterior material is the same as the existing structure material, a photograph of the existing structure will suffice.
- iv. A photograph of the original structure as viewed from the street

b. Submittal Requirements for Paint Color Change

In submitting a request for paint color change for consideration by the Historic Landmark Commission, the owner or their representative shall deliver the following to the City Manager at least 10 calendar days prior to the date the request is to be considered by the Commission:

- i. 12 paint chips for each requested color provided by the paint company or the PMS (Pantone Matching System) numbers for each
- ii. At the meeting provide a 3' x 3' sample to be painted with the paint color applied to the sample. If there is more than one color to be approved, the colors that are proportionately smaller than the main color to be applied may be demonstrated on 1' x 1' samples. The requestor may be asked to paint a large section of the structure for review by the Commission.
- iii. A photograph of the structure as viewed from the street
- iv. Upon completion of approved paint color change, applicants should notify the City Manager within ten (10) calendar days following completion for possible review by the Commission's subcommittee.

c. Signs

- i. All signs submitted for approval must meet requirements set forth by the Sign Ordinance. In submitting a request for a new or revised sign for consideration by the Historic Landmark Commission, the owner or their representative shall deliver the following to the City Manager at least ten (10) calendar days prior to the date the request is to be considered by the Commission:
 - (a) 12 copies of the sign design and colors (12 paint chips for each color provided by the paint company or the PMS numbers for each)
 - (b) 12 photographs or front and/or side elevations of the structure with the sign located on the structure
 - (c) A photograph of the structure as viewed from the street(s)
- ii. Once a sign is approved by the Historic Landmark Commission, the owner or their representative must request a Sign Permit from Code Enforcement.

- d. A representative must be in attendance to present the request to the Historic Landmark Commission.

3. Hearing and Notice Requirements

- a. The Landmark Commission shall not act upon any request for historic landmark designation or upon any application for a building permit or certificate of appropriateness without having first given the applicant for the designation, permit or certificate adequate notice of the Commission meeting and his/her right to be present and to be heard if so desired.
- b. All meetings, regular or special, shall be open to the public. Notice of meetings shall be posted on the appropriate bulletin board in City Hall prior to the meeting date in compliance with current State Laws.
- c. Notice shall be sufficient if:
 - i. the party to be affected receives actual notice by any means; or
 - ii. notice is sent to the address shown on any application or permit filed by the applicant, by United States Mail, certified, return receipt requested; or

- iii. in the absence of any address provided by an applicant, notice is sent to the address for the registered owner as shown by the tax rolls of the Kendall County Appraisal District.

4. Procedure for Historic Landmark Designation

a. Application

Any person or entity may request an historic landmark designation for property owned by such person or entity by submitting an application to the City Manager. The application shall state the following:

- i. The name, telephone number and mailing address of the applicant.
- ii. The location and address of the property to be designated.
- iii. The reasons for requesting the designation. This section of the application need not be extensive, but it should include, if available, the approximate date of construction, and information on the past and present usage of the property.

b. Review of Application

- i. Upon receipt of an application for historic landmark designation, the City Manager shall submit a copy of the application to the Chair of the Landmark Commission, who shall initiate a review of the application within 30 days.
- ii. The Landmark Commission shall hold a regular meeting to consider the application.
- iii. If the application is approved by the Landmark Commission, the application shall be presented to the Planning and Zoning Commission for their review, comment and recommendation to the City Council.
- iv. If the application is rejected by either the Landmark Commission or the Planning and Zoning Commission, the applicant shall be so notified, and the applicant may, within 60 days after receipt of the notice, appeal the decision to the City Council.

c. Action by City Council

- i. All decisions of the Landmark Commission and the Planning and Zoning Commission, either to approve or to disapprove an application for historic landmark designation, shall be reported to the City Council.
- ii. Upon receipt of the two Commission reports, the City Council may designate the subject property as an historic landmark if, in the Council's discretion, the property is deemed to have historical, cultural, archeological or educational value which reflects the heritage of the city.

5. Improvements to Historic Properties

a. Application Required

- i. The owner of any building, structure or land which is a designated historic landmark or of any land or included structure within a designated historic district who proposes to make any exterior change to a building or structure on the site shall apply for approval of the exterior change as follows.
- ii. If the exterior change involves any new construction on the site or the reconstruction, structural alteration, restoration, relocation, demolition, or razing of an historic landmark or included structure, the owner shall apply for a building permit.
- iii. If the exterior change does not involve any such action, the owner shall apply for a certificate of appropriateness.

- iv. Ordinary repair or maintenance which does not involve any change in architectural or historical value, style, general design, arrangement, features, materials, texture, color or appearance, as determined by the City Manager, is exempt from any requirement for approval by the Landmark Commission.

b. Review by City Manager

The City Manager shall review the application to determine whether the proposed exterior change requires a building permit or a certificate of appropriateness, or is exempt from approval by the Landmark Commission. The City Manager shall notify the applicant of his/her findings with regard to the application within seven working days of receiving the application and associated plans.

c. Elements Necessary for Review

The City Manager shall adopt reasonable rules and regulations requiring that any application and plans be complete prior to acceptance for review under this ordinance. Any such rules or regulations shall be maintained in written form, available to all applicants, and shall be accompanied by a check list of the elements necessary for acceptance of any such application.

d. Factors to be considered by the Landmark Commission

- i. In acting upon any application for a building permit or a certificate of appropriateness for any project within a designated historic district or affecting a designated historic landmark, the Landmark Commission shall consider the following factors:
 - (a) The effect of the proposed change upon the general historic, cultural, and architectural character of the historic district or historic landmark;
 - (b) The appropriateness of the exterior architectural features which can be seen from a public street, alley, trail or walkway;
 - (c) The general design, arrangement, materials, textures and colors of the building or structure, and the relation of such factors to similar features of buildings and structures on the landmark site or in the historic district;
 - (d) The extent to which any building, structure or feature situated only partially within an historic district requires special provisions or considerations;
 - (e) Harmony with adjacent buildings and structures in terms of scale, height and mass; and
 - (f) The value of the historic district or historic landmark as an area or site of unique interest and character which should not be impaired.
- ii. The criterion used by the Landmark Commission shall not be the aesthetic appeal of the proposed remodeling or new building or structure, but rather its conformity to the general character of the landmark site and the historic district.

e. Time Limit for Commission Action

The Landmark Commission shall act on any application for a building permit or certificate of appropriateness within 45 days after the application is received by the Chair of the Commission. If the Landmark Commission fails to act within 45 days, the application shall be deemed approved and the City Manager shall immediately so advise the applicant in writing.

f. Prohibition of Repeat Applications

If the Landmark Commission disapproves an application for a building permit or certificate of appropriateness, a re-submittal of the application shall not be accepted within six months from the date of the Commission's action unless the applicant revises the application to incorporate all of the changes lawfully required by the Commission to protect the distinctive character of the historic landmark or historic district.

6. Building Permits for Landmark Buildings or Buildings in a Historic Landmark District

a. Landmark Commission Meeting.

When the City Manager has determined that a building permit is required because the application calls for construction, reconstruction, alteration, restoration, relocation, demolition, or razing of an included structure in a designated historic district or affecting a designated historic landmark, the City Manager shall notify the Chair of the Landmark Commission of this determination at the same time as he/she notifies the applicant. The Chair shall schedule a meeting of the Landmark Commission within 30 days of notification to consider the recommendation which the Commission will give to the City Manager concerning the application. Notice shall be given pursuant to Subsection 8.02.007 of this Article, of the time and place of the meeting, and the applicant shall be invited to appear to explain the application.

b. Procedure if Approved

- i. Upon review of the application, if the Landmark Commission finds that the proposed work is of a nature which will not adversely affect any significant architectural or historical feature of a designated historic landmark or included structure in a designated historic district, and that it is appropriate and consistent with the spirit and purposes of this ordinance, the Commission shall enter this decision into its official minutes and so advise the City Manager in writing.
- ii. The City Manager is then authorized to issue the building permit.
- iii. The applicant shall make no change in any exterior building plans after the application has been approved by the Landmark Commission without the applicant submitting a revised application to the Commission for approval in the same manner as an original application.

c. Procedure if Disapproved

- i. If the Landmark Commission finds that the proposed work will destroy or adversely affect any significant architectural or historical feature of a designated historic landmark or an included structure in a designated historic district or that it is inappropriate or inconsistent with the spirit and purposes of this ordinance, the Commission shall enter this decision into its official minutes and so advise the City Manager in writing.
- ii. The decision of the Landmark Commission shall also describe the changes that would be necessary before the permit application can be approved.
- iii. The City Manager shall forward a copy of this decision to the applicant as soon as received.
- iv. If the applicant is willing to comply with the changes described by the Landmark Commission, the applicant may make any required changes in the plans and the application and resubmit them to the Commission in the same manner as previously described.
- v. If the applicant is unwilling to comply with the changes described by the Landmark Commission, the building permit shall not be approved or issued.

7. Certificate of Appropriateness for a Landmark Building or a Building in a Historic Landmark District

a. Landmark Commission Meeting

- i. When the City Manager has determined that a building permit is not required but a certificate of appropriateness is required, he/she shall notify the Chair of the Landmark Commission of this determination at the same time as he/she notifies the applicant.
- ii. The Chair shall schedule a meeting of the Landmark Commission within 30 days of notification to consider the recommendation which the Commission will give to the City Manager concerning the application.
- iii. Notice shall be given pursuant to Subsection 8.02.007 of this Article, of the time and place of the meeting, and the applicant shall be invited to appear to explain the application.

b. Procedure if Approved

- i. Upon review of the application, if the Landmark Commission finds that the proposed work is of a nature which will not adversely affect any significant architectural or historical feature of a designated historic landmark or an included structure in a designated historic district, and that it is appropriate and consistent with the spirit and purpose of this ordinance, the Commission shall enter this decision into its official minutes and so advise the City Manager in writing.
- ii. The Landmark Commission shall forward a certificate of appropriateness to the applicant within 30 days after the application has been received by the Chair of the Landmark Commission.
- iii. The applicant shall make no change in any exterior building plans after the application has been approved by the Landmark Commission without the applicant submitting a revised application to the Commission for approval in the same manner as an original application.

c. Procedure if Disapproved.

- i. If the Landmark Commission finds that the proposed work will destroy or adversely affect any significant architectural or historical feature of a designated historic landmark or an included structure in a designated historic district, or that it is inappropriate or inconsistent with the spirit and purposes of this ordinance, the Commission shall enter this decision into its official minutes and so advise the City Manager in writing.
- ii. The decision of the Landmark Commission shall also describe the changes that would be necessary before the certificate of appropriateness can be approved.
- iii. The City Manager shall forward a copy of this decision to the applicant as soon as received.
- iv. If the applicant is willing to comply with the changes described by the Landmark Commission, the applicant may make any required changes in the plans and the application and resubmit them to the Commission in the same manner as previously described.
- v. If the applicant is unwilling to comply with the changes described by the Landmark Commission, the certificate of appropriateness shall not be approved or issued.

8. Appeals

- a. Any applicant aggrieved by a decision of the Landmark Commission may, within 60 days of the date of notice of the Commission's decision, appeal the decision to the City Council.
- b. A complaint by any person concerning the sufficiency of notice, economic impact, reasonableness or public necessity as to any rule or regulation, and any complaint concerning substantive or procedural due process, equal protection and equal application of the provisions of this ordinance, or correct interpretation of this ordinance, shall be presented to the Landmark Commission in the first instance, and shall be presented to the City Council by way of an appeal.
- c. Any such complaint shall be specified in writing and filed with the appropriate official before or during the meeting where the agenda item is heard.
- d. No decision of the Landmark Commission or the Council is final for purposes of judicial review until such notice of a complaint shall have been given, and the Landmark Commission, the Planning and Zoning Commission, or the City Council shall have had a reasonable opportunity to evaluate, reconsider, and apply the provisions of this ordinance.
- e. This provision is intended to ensure that due process is fully extended to the property owner and to the community.

9. Historic Preservation Tax Exemption

a. Authorization of Partial Exemption

In accordance with Section 11.24 of the Texas Tax Code, the owner of a building or structure (1) which is a designated historic landmark or which is located within an historic district, (2) which the City Council has designated as a historically significant site in need of tax relief to encourage its preservation, and (3) which has been substantially rehabilitated and/or restored as approved by the Landmark Commission, may apply to City Council for a tax exemption yearly. Upon approval by City Council, the assessed value of the property for ad valorem taxation shall be equal to the assessed value prior to the substantial rehabilitation or restoration, for a period not to exceed 10 consecutive years. This exemption shall begin on the first day of the first tax year after the completion of the rehabilitation or restoration. The deed, grant, sale, bequest, devise or other transfer of ownership of the property shall not cause the exemption provided herein to terminate.

b. Application for Exemption

An application for a historic preservation tax exemption shall be filed with the Landmark Commission. If approved by the Landmark Commission, the Commission shall forward the application to the City Council. Each application shall be signed and sworn to by the owner of the property and shall:

- i. State the legal description of the property proposed for exemption;
- ii. Include an affidavit by the owner describing the historic significance of the historic landmark in need of tax relief;
- iii. Include a final complete set of plans for the historic landmark's restoration or rehabilitation;
- iv. Include a statement of costs for the restoration or rehabilitation;
- v. Include a projection of the estimated construction time and predicted completion date of the restoration or rehabilitation;
- vi. Authorize the members of the Landmark Commission, the City Tax Assessor/Collector, and other City officials to visit and inspect the property as necessary to certify that the property in question is in substantial need of restoration or rehabilitation;

- vii. Include a detailed statement of the proposed use for the property; and
- viii. Provide any additional information to the Landmark Commission which the owner deems relevant or useful, such as the history of the structure or proposed access to the structure by the public.

c. Removal of Exemption

The Landmark Commission shall review annually all those properties which have been granted tax exemptions. If, in the opinion of the Landmark Commission, a property which has been granted an exemption is no longer being maintained in an acceptable state of repair, the Commission shall contact the owners of the property and discuss the Commission's concerns with them. Following such discussion, the Landmark Commission shall make a report to the City Council either recommending that the tax exemption be terminated on the last day of the tax year for that property or outlining the steps the owner must take to bring the property up to acceptable standards. City Council, upon receipt of the report of the Landmark Commission, and after such notice as may be required by law, may remove the tax exemption if it deems such action appropriate.

10. Procedure for Removal of Landmark Designation

a. Application.

- i. The original applicant for an historic landmark designation or the original applicant's successors in interest may request the removal of the designation of the property as an historic landmark by filing with the City Manager an application for removal of the designation. The application for removal of the designation shall be supported by evidence:
 - (a) That the applicant cannot realize a reasonable rate of return on the value of the property and will suffer unreasonable economic hardship if the designation as an historic landmark is not removed; or
 - (b) That other unusual and compelling circumstances justify the removal of the designation.
- ii. The application shall also contain information pertaining to the future use and disposition of the designated historic landmark. An application for removal of an historic landmark designation shall be considered by the Landmark Commission within 30 days after receipt of the application by the City Manager.

b. Demonstration of Economic Hardship

- i. In determining whether the applicant is unable to realize a reasonable rate of return and will suffer unreasonable economic hardship, the Landmark Commission shall make findings as to the need to remove the designation. In making such findings, the Landmark Commission shall consider the following, if the information is provided by the applicant:
 - (a) The assessed value of the land and improvements according to the most recent City tax roll;
 - (b) The total ad valorem taxes on the property for the last two years;
 - (c) Annual debt service, if any, for the previous two years;
 - (d) Appraisals obtained by the owner or applicant within the previous two years in connection with the purchase, financing or ownership of the property;

- (e) Any listing of the property for sale or rent, the price asked and offers received, if any;
 - (f) Any consideration by the owner as to profitable adaptive reuses for the property; and
 - (g) The current fair market value of the property, as determined by at least two independent appraisals made by appraisers with competent credentials.
 - ii. If the property is income producing, the Landmark Commission shall also consider:
 - (a) The annual gross income from the property for the previous two years;
 - (b) Itemized operating and maintenance expenses for the previous two years, including evidence that adequate and competent management procedures have been followed;
 - (c) Annual cash flow, if any, for the previous two years; and
 - (d) Evidence that the owner has made a serious effort to obtain a reasonable return on investment based on the property's previous service.
 - iii. In addition to the information contained in the application, the Landmark Commission may require the applicant to furnish such additional information as it considers relevant or necessary to its determination of unreasonable economic hardship. If any of the required information is not reasonably available to the applicant or cannot be obtained by the applicant, the applicant may file an affidavit stating that the information cannot be obtained and the reasons why it cannot be obtained. If the Landmark Commission, in its discretion, determines that the applicant is unable to provide all of the required information because of the applicant's low income or for other valid reasons, the Commission may waive some or all of the required information or it may accept such substitute information as a low income applicant is able to provide without incurring excessive cost. If the Landmark Commission cannot make a determination based on the information submitted and an appraisal of the property has not been provided, then the Commission may request that the City Manager obtain an appraisal of the property at City expense.
 - iv. If the Landmark Commission determines by a preponderance of the evidence that the applicant is unable to obtain a reasonable return on the property and that continuation of the historic landmark designation would cause the applicant unreasonable economic hardship, the Commission shall recommend to the City Council either (1) that the designation of the property as an historic landmark be removed immediately or (2) that action to remove the designation be delayed for a period of up to 180 days while the Commission searches for an economically viable alternative to removal of the designation. If the Landmark Commission determines otherwise, it shall recommend to the City Council that the designation not be removed. If the Landmark Commission recommends removal of the designation and the City Council takes no action within 180 days of the Commission's recommendation, the designation of the property as an historic landmark is automatically removed.
- c. Unusual and Compelling Circumstances
- i. In determining whether other unusual and compelling circumstances justify removal of the historic landmark designation, the Landmark Commission shall consider:

- (a) The importance of the building, structure, site or object to the integrity and character of the surrounding area, to a cluster of historic landmarks, or to the historic district in which the historic landmark is located;
- (b) The historic or architectural significance of the historic landmark relative to other historic landmarks in the city;
- (c) The difficulty or impossibility of reproducing such a building, structure, site or object because of its design, texture, material, detail or unique location;
- (d) Whether the building, structure, site or object is one of the last remaining examples of its kind in the neighborhood, the city, county, region, state or nation;
- (e) Whether there are definite plans for reuse of the property if the historic landmark designation is removed, the applicant's financial ability to carry out such plans, and the effect such plans would have on the architectural, cultural, historical, archeological, social, esthetic or environmental character of the surrounding area, as well as the economic impact of the proposed redevelopment on the surrounding area and the City as a whole;
- (f) Whether reasonable measures can be taken to save the building, structure, site, object, or cluster from further deterioration, collapse, arson, vandalism or neglect; and
- (g) Whether reasonable measures can be taken to relocate the building, structure or object to a new site.

- ii. In making its recommendation to City Council, the Landmark Commission shall balance the historic, architectural, cultural and/or archeological value of the existing historic landmark against the merits of the proposed replacement project. The Landmark Commission may recommend either (1) that the designation of the property as an historic landmark be removed immediately, (2) that Council action to consider removing the designation be delayed for a period of up to 180 days while the Commission develops a plan to preserve the landmark's historic value, or (3) that the designation not be removed.

d. Alternatives to Removal of the Designation

In any case in which the Landmark Commission recommends to the City Council that action to remove an historic landmark designation be delayed, the Commission shall use the period of the delay to attempt to develop an alternative plan to preserve the landmark's historic value. This plan may involve the transfer to a new owner of the land and improvements which are the subject of the designation, either by gift, purchase or other means, or the acquisition of the building, structure or object and its relocation for preservation at another site, or any other measure which in the Landmark Commission's judgment will effectively relieve an unreasonable economic hardship or respond to the unusual and compelling circumstances and at the same time will allow the public benefits of the designation to be continued. The City Council shall not act to consider removing the designation within the period of the delay until it receives a report from the Landmark Commission, either recommending such a plan or stating that the Commission has been unable to develop such a plan.

11. Demolition by Neglect

a. Structural Maintenance and Repairs Required.

The owner of any historic landmark, or of any included structure in an historic district, shall preserve such landmark or structure against deterioration and

decay and shall promptly repair the landmark or structure if it is found to have any of the following defects:

- i. A deteriorated or inadequate foundation, or defective or deteriorated flooring or floor supports, or flooring or floor supports of insufficient size or strength to carry loads imposed with safety;
- ii. Members of walls, partitions or other vertical supports which split, lean, list or buckle due to defective material or deterioration, or which are of insufficient size or strength to carry loads imposed with safety;
- iii. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle due to defective materials or deterioration, or which are of insufficient size or strength to carry loads imposed with safety;
- iv. Fireplaces or chimneys which list, buckle or settle due to defective materials or deterioration, or which are of insufficient size or strength to carry loads imposed with safety;
- v. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors, or defective protection or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other protective covering, or any other fault or defect in a structure which renders it structurally unsafe or not properly watertight.

b. Exterior Site Maintenance Required

The owner of any historic landmark, or of any included structure in an historic district, shall keep the property, including vacant property, clear of weeds, fallen trees or limbs, debris, abandoned vehicles, and all other refuse as required by all applicable City ordinances.

c. Preventive Action by Landmark Commission

The Landmark Commission, on its own initiative, may file a complaint with the City Manager requesting that the City proceed under all applicable ordinances to require correction of defects or repairs to any historic landmark or any included structure in an historic district so that the landmark or included structure will be preserved and protected in accordance with the purposes of this Article.

d. Limitation on Permit Applications

If any historic landmark or any included structure in an historic district must be demolished as a hazard to public health and safety after the owner thereof has received two or more notices from the City Manager of neglect in violation of this or other ordinances, no application for a permit for any project on the property may be considered for a period of three years from the date of the demolition.

12. Demolition of Hazardous Structures

Nothing in this ordinance shall apply to or in any way prevent the demolition of any building or structure which is an imminent danger to public health and safety and which cannot be made reasonably safe according to the opinion of the City Manager.

2.8. PLATTING PROCEDURE

A. GENERALLY

1. Short Title

This Section shall be known and may be cited as the Platting Procedure of Boerne, Texas.

2. Authority

This chapter is adopted under the authority of the City Charter and of Chapter 212 of the Texas Local Government Code, which chapter is hereby made a part of these regulations.

3. Purpose and Intent

- a. The purpose of this chapter is to provide for the safe and orderly development of the city and to promote the health, safety, morals, and general welfare of the community, in accordance with the master plans of the City.
- b. Land subdivision shall provide adequate streets, utilities, services and facilities. Land shall not be subdivided until adequate public facilities and improvements exist, or proper provision has been made for utilities and capital improvements. These would include drainage, water and sewerage, as well as schools, parks, recreational facilities, transportation facilities, and improvements.
- c. Land subdivision shall create tracts that can be used safely for building purposes without danger to health or peril from fire, flood, or other menace.
- d. Land subdivision shall protect environmentally sensitive areas and promote sustainable development practices.
- e. Land subdivision shall be consistent with the comprehensive plan and the other master plans of the City.

4. Jurisdiction

These regulations shall govern every owner or subdivider of any tract of land situated within the corporate limits of the city or within the extraterritorial jurisdiction of the city who may seek to subdivide the same into two or more parts for the purpose of creating a building lot or lots, or for the purpose of laying out any subdivision of or additions to the city, or for the purpose of laying out streets, alleys, parks, squares, easements, or other parts that are to be dedicated for public use or the use of the owners or purchasers of adjacent lots.

5. Plats Required for Subdividing Land

No person shall subdivide land without making and recording a plat and complying fully with this chapter. The owner or proprietor of any tract of land within the corporate limits of the City of Boerne or within its extraterritorial jurisdiction who desires to subdivide land (i.e., to create a subdivision") shall submit a plat of such subdivision in accordance with this chapter.

6. Types of Plats Established

- a. The types of plats are in accordance with Chapter 212 of the Texas Local Government Code.
- b. Minor Plats

Minor plats shall involve no more than 4 lots and shall not require any extension of public utilities or creation of public improvements, including streets.

c. Subdivision Plats

Major subdivision plats shall include all other plats involving the subdivision of land, which are not exempted by this Section or by state or federal law.

d. Development Plats

Development plats include all other plats for the development of land which are not exempted by this Section or by state or federal law.

e. Conveyance Plats

Conveyance plats are plats for recordation purposes only. Conveyance plats are not intended for the development of property.

7. Approval Required

- a. It shall be unlawful for any person, firm, corporation, or organization to construct or cause to be constructed any streets, utilities, buildings or other improvements to any tract of land unless that land has been lawfully platted, in accordance with this Section, and no permit for such improvements, or for service or connections of public utilities to said land, shall be granted until the applicable plat has been approved, in accordance with this Section.
- b. No building permits will be issued for the construction of any building on any unplatted land within the city. Minor repair permits may be issued, in accordance with the building regulations of the City. When additions, alterations, or repairs within any 12-month period exceed 50 percent of the value of an existing building or structure on previously unplatted property, the land upon which such building or structure is located shall be platted in accordance with the provisions of this Section.

8. Action within Thirty Days

- a. The requirements of this subsection are mandated by state law and supersede any contrary provisions of the City Code.
- b. The Planning Director shall schedule an application for development plan or plat approval for consideration by the Planning and Zoning Commission not later than the 30th day after the application is deemed complete.
- c. The Director shall either approve or approve with conditions an application eligible for administrative approval or schedule the application for Planning and Zoning Commission to approve, approve with conditions, or disapprove with reasons not later than the 30th day after the application is deemed complete.
- d. The Director shall either approve, approve with conditions, or disapprove with reasons an application for a Construction Plan not later than the 30th day after the application is deemed complete.
- e. A condition for approval or reason for disapproval must be in writing and may not be arbitrary. The condition or reason must:
 - i. be directly related to requirements adopted under Texas Local Government Code Chapter 212 Subchapter A (Regulation of Subdivisions); and
 - ii. include a citation to the law, including a statute or municipal ordinance, that is the basis for the condition for approval or reason for disapproval.
 - iii. Except as provided herein, the Planning and Zoning Commission shall approve, approve with conditions, or disapprove with reasons an application for a

Development Plan or a Plat not later than the 30th day after the application is deemed complete.

- iv. If the director fails to comply with to comply with the 30 day time limit for decision, or the Planning and Zoning Commission fails to comply with the 30 day time limit for decision, the application for the development plan, plat or construction plan is approved by operation of law, unless the time for action is extended upon written request by the applicant, filed 7 days before the Director or the Planning and Zoning Commission is scheduled to act.

9. Exemptions

A plat is not required for any of the following:

- a. The public acquisition by purchase of land for the widening or opening of streets
- b. Issuing a building permit for a property that is in a residential district and for which the proposed construction does not alter the property boundaries or require any additional public improvements. Such cases could include:
 - i. Adding to or altering an existing building or structure;
 - ii. Adding an accessory building or structure; or
 - iii. Restoring any building or structure previously destroyed by fire, explosion, or any other casualty or act of God, where the extent of the destruction is not more than 50% of its reasonable market value.

10. Subdivision Name

The proposed name of a subdivision shall not use a word that is the same as, similar to, or pronounced the same as a word in the name of any other subdivision in City or its ETJ except for the words “court,” “addition,” “place,” “heights,” “hills,” and similar words, unless the land platted is contiguous to and platted by the same applicant who platted the existing subdivision bearing the name, or the applicant has obtained the written consent of the party who platted the subdivision bearing that name, or the Planning Director requires the use of the same name for purposes of clear identification.

11. Variances

There sometimes arise occasions where conformity to the standards of this chapter would create a hardship or significantly limit the use and enjoyment of private property. To preserve such rights while also protecting the interests of the community at large, platting variances shall only be granted where physical constraints, such as topography or hydrology, cause conformity with the applicable design standards to be rendered impracticable, or where conformity would cause undue hardship for the subdivider.

a. Initiation of Request

A variance application shall be filed as a component of the plat application packet and so noted on the Plat Application form.

b. Completeness Review

- i. The Planning Director shall review the Plat Application to ensure that the variance request is appropriately documented.
- ii. The Plat Application form shall state fully and demonstrate the special conditions and circumstances that cause such variance to be sought.

- iii. Additional information, in the form of studies, analyses and other demonstrations shall be included to confirm the hardship and/or justification for the requested variance.

c. Decision

The variance shall be approved, denied or approved with conditions as part of the decision approving, denying or approving with conditions the accompanying plat application.

d. Approval Criteria

- i. Pecuniary interests standing alone shall not be justification for the granting of a variance.
- ii. Variances shall only be granted when all of the following hold true:
 - (a) Conformity to the platting standards and regulations would deprive the applicant of reasonable use of, access to or enjoyment of the land that is to be subdivided;
 - (b) The requested variance will not be detrimental to the public welfare;
 - (c) The variance does not hinder the use of, access to or enjoyment of any adjacent property not belonging to the applicant; and
 - (d) The variance conforms with all other applicable standards of the Unified Development Code.

e. Variances Requiring Council Approval

- i. Variances related to public facilities or public utility services, and variances due to non-conformity to the master plans of the City, shall be heard and decided by the City Council.
- ii. Council shall hear and render a decision on a requested variance within 30 days of the acceptance of the variance application.

12. Appeals

- a. Applicants who are denied a variance from the Planning and Zoning Commission in matters of plat, who are within the jurisdiction of City Council may appeal the decision of the Commission to City Council within 30 days of the date that the Commission's decision was made.
- b. In matters of plat, the jurisdiction of City Council is defined as area encompassing the installation of any and all public improvements owned, operated or maintained by the City.
- c. All such requests for appeals must be in writing and submitted to the Planning Director within the aforementioned time frames.
- d. Appeals of all other actions by the Commission shall be to courts of appropriate jurisdiction.

13. Platting Fees and Assessments

All required fees shall be collected by the city when the application is submitted. The official fee schedule shall be maintained by the City.

14. Enforcement

- a. The City Manager or his designated representative may institute any appropriate civil action or proceedings to prevent violations or threatened violations of these regulations.
- b. The imposition of any penalty does not preclude the City from instituting any appropriate action or proceedings to require compliance with the provisions of this chapter and with administrative orders and determinations made herein.

15. Penalties

Any person, firm, or corporation who shall violate any of the provisions of this ordinance or who shall fail to comply with any provision hereof shall be guilty of a class C misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$1,000. Each day that such violation continues shall constitute a separate offense.

B. PRE-SUBMITTAL CONFERENCE

1. Purpose of the Pre-Submittal Conference

- a. The pre-submittal conference provides the applicant with the opportunity to review the Development Plan for the property with the Planning Director, and to discuss the public facilities that will be required and anticipated impacts of the project on the City.
- b. The pre-submittal conference provides the applicant with information regarding the procedure and submittal requirements associated with the plat in question.

2. Applicability

- a. For any project or property where a minor plat, a subdivision plat or a development plat is required, participation in a pre-submittal conference with the Planning Director or his representative is required.
- b. The pre-submittal conference shall be held at least 7 days prior to submitting the Development Plan.
- c. At the pre-submittal conference, the owner or proprietor may be represented by his land planner, engineer and/or surveyor.
- d. At the pre-submittal conference, the Planning Director shall present the applicant with the Development Plan Submittal Checklist and any applicable forms that will be required as a part of the submittal.

3. The Submittal Checklist

- a. At the Pre-Submittal Conference, the Planning Director shall review the submittal checklist with the applicant.
- b. Both the applicant and the Planning Director or his representative shall initial the Checklist. The Checklist shall be included in the Development Plan submittal as verification of participation in the pre-submittal conference.

C. DEVELOPMENT PLANS

1. Purpose

A development plan illustrates the general form and character of a development. It communicates the general concept of the project and an idea of the impacts the project might have on municipal systems, the environment, community character and nearby properties.

2. Types of Development Plans and When They Are Required

- a. A Conceptual Development Plan is required for Minor Plats and Replats and Development Plats and Replats
- b. A Detailed Development Plan is required for Subdivision Plats and Replats
- c. No development plan is required for Conveyance Plats

3. Timeline for Submittal

The Development Plan shall be submitted no less than 7 days prior to the Pre-Submittal Meeting.

4. Submittal Requirements

- a. The submittal requirements for a Development Plan shall be maintained by the Planning Department and provided to the applicant in the form of a checklist.
- b. The submittal requirements will depend on the type of development plan that is required.
 - i. Detailed Development Plans are required for Subdivision Plats.
 - ii. Conceptual Development Plans are required for Minor Plats and Development Plats
 - iii. No development plan is required for conveyance plats.

c. Submittal Requirements for a Detailed Development Plan

i. Submittal format

Detailed Development Plans shall conform to the format requirements indicated by the Application Checklist, which is maintained by the Planning Director. This includes printed format, digital format and number of copies required.

ii. Filing Fee

No action shall be taken until the filing fee, as established by City Council, has been paid. The fee shall not be refunded should the Development Plan be disapproved.

iii. Project Description

- (a) Current property zoning
- (b) Proposed rezoning, if applicable
- (c) Anticipated uses
- (d) Estimated project timeline
- (e) Formal application

iv. Plans, Studies and Project Impacts

- (a) Water Distribution and Sanitary Sewer Plan
- (b) Traffic Impact Analysis
- (c) Transportation Network Plan, if new streets or connections are being provided as part of the development;
- (d) Low Impact Development Plan;
- (e) Floodplain Protection Plan, if applicable;
- (f) Tree Preservation Plan;
- (g) Fire Protection Plan;
- (h) Public Facilities Plan;
- (i) Parkland Dedication Plan;
- (j) If the project has any residential component, the Plan shall also include:
 - (i) Total number of residential units or lots;
 - (ii) Residential density, broken out by phase, if the project has any residential component;
- (k) If the project has any nonresidential component the Plan shall also include:
 - (i) A Parking Plan indicating the parking requirements and proposed parking arrangement for non-residential projects or project components;
 - (ii) Proposed curb cuts for nonresidential projects or project components
- (l) Steep Slope Map, as applicable;
- (m) Viewshed Protection Plan;
- (n) Stream Corridor Preservation Plan;
- (o) Subdivisions 10 acres or larger shall include a written inventory of existing natural features reflective of the Hill Country character, which correspond to the Combined Preliminary/Final Plat. The inventory shall include historical or archeological areas, areas of habitat for endangered or threatened species of plants and animals, distinctive geological and topographical features;~~CC4~~~~CC5~~

d. Submittal Requirements for a Conceptual Development Plan

i. Submittal format

Conceptual Development Plans shall conform to the format requirements indicated by the Application Checklist, which is maintained by the Planning Director. This includes printed format, digital format and number of copies required.

ii. Filing Fee

No action shall be taken until the filing fee, as established by City Council, has been paid. The fee shall not be refunded should the Development Plan be disapproved.

iii. Project Description

- (a) Current property zoning
- (b) Proposed rezoning, if applicable
- (c) Anticipated uses
- (d) Estimated project timeline
- (e) Anticipated project phases, if known and/or applicable

- (f) Street network (types and conceptual layout), if applicable
- (g) Public facilities, including schools, parks and trails, if applicable
- (h) A Floodplain Protection Plan, if applicable;
- (i) A Parkland Dedication Plan, if applicable.
- (j) For projects with any residential component, the Plan should include:
 - (i) Residential density, broken out by phase if applicable
 - (ii) An estimated number of residential units or lots
- (k) If a non-residential project, the Conceptual Development Plan should include:
 - (i) Parking requirements and proposed parking arrangement
 - (ii) Proposed curb cuts

5. Criteria for Approval

The Development Plan shall be approved upon demonstration that all of the following hold true:

- a. The Development Plan Application is complete.
- b. The Development Plan fully complies with the Unified Development Code
- c. In no way does the Development Plan create a violation of any applicable current ordinances, statutes, or regulations.
- d. The proposed is consistent with the Boerne Master Plan.
- e. All required plan components identified in the Submittal Requirements have been certified as approved by the designated city official.
- f. The proposed subdivision provides adequate pedestrian access to parks, open space, and commercial, employment, and retail destinations.
- g. The proposed subdivision will not have detrimental impacts on the safety or exercise of permitted uses on adjacent properties.

6. Decision

- a. The Development Plan may be administratively approved but shall not be administratively disapproved.
- b. Within 30 days of the filing date, the Planning Director shall act on the proposed Development Plan. If the Development Plan is not approved by the Planning Director, it shall be referred to the Planning and Zoning Commission for action within 30 days of the date that the Planning Director rendered a decision.
- c. The Planning and Zoning Commission may approve, approve with conditions or disapprove the Development Plan, in keeping with the requirements for Action Within Thirty Days (A.8.).
- d. In considering an application for a Development Plan that is not approved by the Planning Department and which has been referred to the Planning and Zoning Commission for action, the Commission may consider and impose modifications or conditions to the extent that such modifications or conditions are necessary to ensure compliance with the criteria for approval as defined in this chapter.
- e. If the Development Plan is approved, it shall be indexed and filed with the Planning Department.
- f. Approval of a Development Plan shall not constitute approval of the corresponding Plat.

7. Validity of Approval

- a. Approval of the Development Plan shall be valid for a period of 12 months from the date of approval, and the general terms and conditions under which the approval was granted will not be changed. The approval of a Development Plan shall be deemed withdrawn unless a Plat is filed on any portion of the Development Plan within the 12-month period.
- b. The validity of the Development Plan is extended indefinitely after approval of a Plat for any portion of the Development Plan.
- c. It shall be unlawful to cause any Development Plan to be recorded with the County Clerk.

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D. MINOR PLAT

1. Eligibility

A property is eligible for submittal as a minor plat if it:

- a. Involves no more than four lots;
- b. Fronts an existing street;
- c. Does not require the creation of any new street or the extension of municipal facilities in order to provide adequate service to all lots of the proposed plat;
- d. The topography of the property in question and of the surrounding land is such that no on-site drainage improvements are necessary. Depending on site conditions, the Planning Director may require a drainage study to be performed by a licensed engineer for verification.

2. Minor Plat Submittal Requirements

- a. The application shall submit a minor plat application to the Planning Director for administrative approval.
- b. Applications for minor plats shall include the following:
 - i. Fees. The applicant shall pay all fees associated with a minor plat at the time of submittal.
 - ii. Plat Application and Code Compliance Forms
 - iii. Original official tax certificates, showing no outstanding or delinquent taxes, have been submitted for all parcels contained within the plat.
 - iv. Demonstration of conformity with City Plans and Development Regulations
 - v. Zoning. Existing zoning of the property and the zoning of all adjacent lots
 - vi. Consistency with the Future Land Use Plan. Indicate any land use district that is applicable to the project area, according to the Future Land Use Map or the text of the Future Land Use Plan of the Master Plan.
 - vii. Thoroughfares. Indicate all streets that are adjacent to the property.
 - viii. Existing Density. Include a map showing the property boundary lines of the proposed development, as well as the property lines of all adjacent properties.
 - ix. A plan showing existing topography with contour lines of five feet, or less, with the proposed lot layout shown;
 - x. A plan showing the proposed lot layout, lot numbers, and building setback lines
 - xi. An exhibit showing the entire proposed subdivision layout on a single page will be required if a multiple page minor plat is submitted.

3. Criteria for Approval

- a. An application for minor plat has been filed by the Planning Director and deemed complete.
- b. The proposed plat conforms to the master plan, the thoroughfare plan, the park master plan and the master utility plans of the City.
- c. The proposed plat conforms to the standards and provisions of the Unified Development Code.

4. Decision

- a. The City delegates to the Planning Director the authority to approve minor plats and amendments to minor plats.
- b. The Planning Director may, for any reason, elect to present the plat to the Planning and Zoning Commission or to City Council, or to both, to approve the minor plat.

- c. The Planning Director shall not disapprove the minor plat and shall be required to refer any minor plat that he does not approve to the Planning and Zoning Commission for consideration.
- d. A final decision shall be rendered within 30 days of filing of the minor plat application in accordance with the Action within Thirty Days [A.8](#) provision.

5. Applicant Response to Conditions or Disapproval

- a. If an application is approved with conditions or disapproved, the applicant may submit a response to the decision.
- b. Upon receipt of an applicant response to a plat application decision, the Planning Director shall:
 - i. determine if the applicant response meets the following requirements:
 - (a) the response adequately addresses each condition of approval or reason for disapproval
 - (b) the response includes only those changes necessary to address the condition of approval or reason for disapproval
 - (c) the response does not include substantial changes unrelated to the condition of approval or reason for disapproval
 - ii. not later than 15 days after the applicant response is submitted, the Director shall:
 - (a) approve the plat or approve the plat with conditions; or
 - (b) schedule the plat for the Planning and Zoning Commission to approve, approve with conditions or disapprove the plat

E. SUBDIVISION PLAT

1. Applicability

A subdivision plat is any plat that is not a minor plat which involves the subdivision of land.

2. Generally

- a. An approved plat shall be required before any construction work may begin within the project boundaries of the Subdivision Plat.
- b. The Subdivision Plat shall be approved before the plat can be recorded.
- c. Subdivision Plat applications shall not be deemed complete until a Detailed Development Plan has been approved.
- d. The Subdivision Plat shall constitute only that portion of the approved Detailed Development Plan which the subdivider proposes to record and develop at the time.
- e. The Subdivision Plat shall substantially conform to the approved Detailed Development Plan, or the amended Detailed Development Plan.
- f. Any substantial deviation from the Detailed Development Plan, other than that which constitutes a minor amendment, shall require application and approval of a new Detailed Development Plan.

3. Initiation and Completeness

- a. An application for subdivision plat approval may be submitted after a letter of certification or a revised letter of certification has been issued by the applicable certifying departments. An application for subdivision plat approval shall not be deemed complete until a letter of certification or a revised letter of certification has been issued by each certifying department.
- b. As required by 212.008 of the Texas Local Government Code, an application for subdivision plat approval shall be filed with the Planning and Zoning Commission. The Planning Director shall serve as the agent for the Commission for purposes of accepting plat applications pursuant to this Section.
- c. Copies of the Subdivision Plat application shall be submitted to the Planning Director not less than 30 days prior to the Planning and Zoning Commission meeting at which consideration is desired.
- d. The Subdivision Plat shall be considered officially filed only after it is deemed complete by the Planning Director. Completeness signifies that the application is found to comply with the submittal requirements for a Subdivision Plat.
- e. The Planning Director shall notify the applicant by mail within 10 days as to whether the application is deemed complete. The post-marked mailing date of this notification shall serve as the filing date for the Subdivision Plat.
- f. From this official filing date on which completeness is determined, the Commission shall have 30 days to act on the Subdivision Plat application.

4. Submittal Requirements

- a. The submittal requirements for a Subdivision Plat shall be maintained by the Planning Department and provided to the applicant in the form of a checklist.
- b. Submittal format

Subdivision Plats shall conform to the format requirements indicated by the Application Checklist, which is maintained by the Planning Director. This includes printed format, digital format and number of copies required, as well as specifications for maps, plans, drawings and illustrations.

- c. The applicant shall submit a Plat Application Form and a Code Compliance Form with the subdivision plat application.
- d. Payment of Fees

All fees for plat submittal must be paid before an application will be considered complete. Fees shall be submitted with the Plat Application. The fees for submittal of a Detailed Development Plan application should be determined according to the City's fee schedule. The fee shall not be refunded should the Subdivision Plat be denied.

e. Ownership Information

- i. Names and lot numbers of adjacent plats, if the application is for a secondary or subsequent phase of a master development project, for which the platting of an earlier phase was previously submitted.
- ii. Certification of Consent letter, including a legal description of the boundaries of the proposed development and the dedication of public ways or spaces. This certificate shall be signed, dated and notarized by the owner or the designated agent of the owner.
- iii. Tax certificates, indicating that all taxes on the land being subdivided have been paid to the current year for the proposed subdivision.
- iv. Notation of any restrictions or conditions that were imposed as a contingency of Subdivision Plat approval.

f. Property Information

- i. A location map at a scale of 1 inch to no more than 2,000 feet, indicated the location and distance relation to all surrounding major thoroughfares.
- ii. Legal description and exhibit of the property at a scale of 1 inch to no more than 50 feet, showing the property boundary.
- iii. Property survey prepared by a professional land surveyor with two points identified by State Plane Coordinates, the basis of bearings used and a north point.
- iv. In addition to the location of property lines, the following development constraints shall be identified in the subdivision plat Application:
 - (a) existing easements
 - (b) burial grounds
 - (c) railroad rights of way
 - (d) rivers, lakes, and other watercourses
 - (e) oil and gas lines, wells and pad sites
 - (f) any other easement or constraining use that influences the development of the proposed subdivision
- v. A map that identifies all adjacent parcels and any parcels with a portion of land falling within 200 feet of the property in question.
- vi. Final location, arrangement and dimensions of all proposed and existing lots
- vii. Lots numbered, as approved by the City of Boerne.
- viii. Sufficient data to determine readily and reproduce accurately on the ground, or to ascertain by physical inspection of the property, the location, bearing and length of every street and alley line, lot line, building line and easement, as well as every boundary line of reserved or dedication areas.

g. Subdivision Plat Maps, Plans, Specifications, Drawings and Illustrations.

- i. All monuments erected and corners established in the field shall be identified, noting the material of which the monuments, corners and other points are made. Lot corners need not be shown.

- ii. Right of way lines, streets, easements and property lines
- iii. Building setback lines, if/as required by the zoning ordinance
- iv. Location and dimensions of all easements
- v. Location and dimensions of all lots and blocks
- vi. Location, dimensions and right of way width of all streets, public and private, within the property boundary
- vii. Name of each street, including those adjacent to the property
- viii. Numbers assigned to all blocks, lots and sites
- ix. Surveyor's certificate and seal, including the date, on the plat

h. Demonstration of Sustainable Community Development Activity

The applicant shall include documentation of the following measures along with the subdivision plat Application:

i. Parkland Dedication

The applicant shall identify parks and trails, demonstrating consistency with the allocations included in the Subdivision Plat submittal. The location, dimensions, type and area of all parcels of land set aside for parks and open space, or for public spaces for uses of the residents of the proposed development, shall be identified.

ii. Traffic Mitigation

The applicant shall demonstrate mitigation of traffic impacts identified in the Traffic Impact Analysis and approved as part of the Subdivision Plat submittal.

iii. Tree Preservation

The applicant shall demonstrate employment of preservation measures identified in the Tree Preservation Plan as approved as part of the Subdivision Plat submittal.

iv. Impact Fees

The applicant shall present final documentation to demonstrate conformance with the impact fee requirements of the City of Boerne.

v. Stormwater Management

The applicant shall demonstrate execution of any and all measures for stormwater management identified in the Stormwater Management Plan submitted and approved as part of the Subdivision Plat Submittal.

i. Plan Tabulation

Any modifications to the plan tabulation presented in the Subdivision Plat shall be noted in this section of the subdivision plat application, according to those same categories addressed in the Subdivision Plat Application. If no modifications are present, a page shall be included indicated that the final counts are equal to the preliminary counts.

5. Subdivision Plat Approval Criteria

The subdivision plat application shall be approved upon demonstration that:

- a. The subdivision plat complies with the approved Detailed Development Plan.
 - i. The proposed subdivision conforms to all relevant requirements of the Unified Development Code and variances have been requested for any nonconformance.
 - ii. In no way does the subdivision plat create a violation of any applicable regulations of the City or of state or federal law.
 - iii. The vehicular and pedestrian system is consistent with adopted transportation plans, including the Master Thoroughfare Plan and the street layout standards set forth in The Unified Development Code,
 - iv. The proposed subdivision will not have detrimental impacts on the safety or exercise of permitted uses on adjacent properties.
 - v. The subdivision name and numbering on all subdivision plats shall be consistent with the approved Detailed Development Plan. Block numbers shall run consecutively throughout the entire subdivision, even though such subdivision may be finally approved in sections.
 - vi. Any land located within Zone A, as shown on the currently adopted flood boundary and floodway maps of the flood insurance study, is determined to be suitable for its intended use, and the proposed subdivision adequately mitigates the risks of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, or any other floodplain-related risks to the health, safety, or welfare of the future residents of the proposed subdivision in a manner consistent with The Unified Development Code.
- b. Any requests for waiver of public improvements must be submitted in writing with the subdivision plat.

6. Decision

- a. The Planning and Zoning Commission shall approve a subdivision plat if it complies with the requirements of this chapter.
- b. The subdivision plat application shall be distributed to the Planning and Zoning Commission within 10 days of the filing date.
- c. A report shall be presented to the Planning and Zoning Commission at the next regular meeting by the Planning Director stating the results of the administrative review of the subdivision plat. Such report should include comments relative to the completeness review and the criteria for approval of a subdivision plat. The report may also include comments from municipal departments or other public agencies that oversee or are impacted by urban development in the City.
- d. The Subdivision Plat shall be approved, approved with conditions, or denied based on its compliance with Subdivision Plat Approval Criteria.
- e. The plat application shall expire unless the plat application is heard by and approved by the Planning and Zoning Commission within twenty-four (24) months of the date the plat application is submitted to the Planning Department.
- f. Within 30 days of the official filing date, the Planning and Zoning Commission shall act on the submittal by approving or denying the proposed subdivision plat, in keeping with the Action Within Thirty Days (A.8) provision of this Section.
- g. A subdivision plat is deemed approved unless it is approved or disapproved by the Commission within the 30-day period.

7. Applicant Response to Conditions or Disapproval

- a. If an application is approved with conditions or disapproved, the applicant may submit a response to the decision.
- b. Upon receipt of an applicant response to a plat application decision, the Planning Director shall:

- i. determine if the applicant response meets the following requirements:
 - (a) the response adequately addresses each condition of approval or reason for disapproval
 - (b) the response includes only those changes necessary to address the condition of approval or reason for disapproval
 - (c) the response does not include substantial changes unrelated to the condition of approval or reason for disapproval
 - ii. schedule the application for consideration by the Planning and Zoning Commission not later than the 15th day after the applicant response was submitted.
 - c. If the applicant response as submitted complies with the provisions of this Section and the Planning and Zoning Commission or the Director fails to comply with the time limits for action, the application for the plat is approved.
8. Certification of Approval of the subdivision plat
- a. The subdivision plat shall be certified before it is recorded.
 - b. The Chairman of the Planning and Zoning Commission shall certify the subdivision plat once the following criteria have been met:
 - i. Planning and Zoning Commission has approved the subdivision plat.
 - ii. The subdivider and the City have executed all agreements that are to accompany the subdivision plat.
9. Circumstances Requiring City Council Approval
- Council shall be required to approve all subdivision plats where public facilities or public utility services deviate from or do not comply with the Master Plan, master thoroughfare plan or master utility plans of the City.
10. Validity of Approval
- a. Approval of the subdivision plat shall not expire, and the terms and conditions under which the approval was granted shall not be changed.

F. DEVELOPMENT PLATS

1. Applicability

- a. The City hereby chooses by ordinance to be covered by Subchapter B of Chapter 212 of the Texas Local Government Code.
- b. A property is not eligible for a development plat if a subdivision plat is required under an ordinance of the City of Boerne or under Subchapter A of Section 212 of the Texas Local Government Code.
- c. A development plat is required for tracts of land less than 5 acres in area

2. Plat required for new development

New development may not begin on the property until the development plat is filed with and approved by the P&Z or the Planning and Community Development Director.

3. Pre-submittal Conference Required

Before submitting a development plat, the developer shall request a conference with the City Manager or his designee and designated City staff. At this conference, the developer shall present the proposed development plat for advice on the procedures, specifications and standards required by the City. Specific topics of the conference may include:

- a. General conformance with the official Master Plan of the City, and any specific area plan prepared under the guidance of that plan;
- b. Introductory discussions of applicable standards from these regulations, according to the guidance of the Master Plan;
- c. General plans for improvements and correspondence with any City capital improvement plans; and
- d. The type of application and submittal requirements, specifically other requirements determined by utility providers, Kendall County requirements for road improvements or setbacks.

4. Initiation and Completeness Review

- a. the developer shall deliver the following at least 30 calendar days prior to the date the plat is to be considered.
- b. Within 7 calendar days of submittal of the development plat, the City staff will notify the developer or engineer of record via email or formal letter if the submittal is administratively complete. Any deficiencies in the submittal shall be specifically identified in the notice.
- c. If the developer or engineer of record is notified that a submittal is incomplete, the time requirements are suspended until the submittal is deemed complete by City staff.
- d. If the submittal is not complete or approved within one year of the initial submittal date, the submitted plat is void.

5. Submittal Requirements

- a. Five separate blue or black line 18" x 24" copies of the development plat for staff review meeting the requirements of sub-section B, one black and white copy 8.5" by 11" suitable for making overhead copies and a pdf.
- b. Formal application and appropriate filing fee established by the City Council. No action shall be taken by the staff or Commission until the filing fee has been paid. The fee shall not be refunded should the developer fail to make formal filing of the development plat, or should the plat be disapproved.
- c. Two copies of a Traffic Impact Analysis meeting the City's TIA requirements.

- d. Letters/memos/emails from all the following agencies that either have jurisdiction over improvements required or desired in the development plat or that need to be notified that development is occurring, including:
 - i. City of Boerne Fire Code Official (if in the ETJ);
 - ii. Bandera Electric Co-op and/or Pedernales Electric Co-op;
 - iii. Texas Department of Transportation (if any state right-of-way is involved in streets or access points);
 - iv. Cow Creek Ground Water Conservation District (if in the county);
 - v. Cable and telephone wire services;
 - vi. Kendall County (if any county right-of-way is involved in streets or access points);
 - vii. Kendall County Development office verifying approval of the On-site sewage facilities (OSSF) design for the intended use (if in the county); and
 - viii. any other State or public agency approval with jurisdiction over improvements desired in the subdivision.
- e. An illumination Plan
- f. A Parkland Dedication Plan, if applicable, including the location and proposed area of all public or common open spaces, including a table of requirements based on the proposed development and typical service areas for each Type.
- g. Identify on the plat the location and species of all Heritage trees.
- h. A tree survey for all property subject to the application that documents the presence of all Legacy Standard and Heritage Trees.
- i. Three complete bound sets of design and construction documents required by this Chapter, each bound with a copy of the plat (deliver to Public Works).
- j. A minimum of two (2) copies of the drainage study per City standards.
- k. If in the city limits and a steep slope is present on the site, provide a Slope Map.
- l. If in the city limits, a Fire Protection Plan shall be submitted with the plat. If in the ETJ, a County approved Fire Protection Plan shall be submitted with the plat.
- m. Form and Content of the Plat
 - i. The development plat shall be prepared by a registered public surveyor and bear his/her seal.
 - ii. The plat shall show or be accompanied by the following information:
 - (a) The plat shall be drawn to a scale of one inch to 100 feet or one inch to 50 feet. The development plat shall generally include the entire tract intended to be developed at one time. When more than one sheet is necessary, an index sheet showing the entire subdivision at a scale of one inch to 400 feet shall be attached to the plat.
 - (b) Each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;
 - (c) The name of the development, which shall be approved by the City Manager or his designee.
 - (d) The names and addresses of owners of record.
 - (e) A location map showing the relation of the development to well-known streets in all directions.
 - (f) North point, with north to the top of the sheet if possible, and the bearing of record.
 - (g) Name and location of adjacent subdivisions, watercourses on or adjacent to the proposed development, and the property lines and names of the property owners in all adjoining unsubdivided tracts.
 - (h) The total acreage in the proposed development.
 - (i) The location, right-of-way width, name and description of all existing or recorded streets, alleys, or other transportation features or similar

reservations which are adjacent to the development, as determined from existing records.

- (j) Two-foot contour interval surveys tied to City Control Monuments or USGS Benchmarks. Where conditions exist that make the use of two-foot contours impractical, alternate intervals may be used upon approval of the City Manager or his designee.
 - (k) The location of the City limit lines and the outer border of the City's ETJ if either traverse the development or are contiguous to the development boundary.
 - (l) The centerline of watercourses, creeks and existing drainage structures within and adjacent to the development. Pertinent drainage data and the limits of areas subject to flooding shall be shown, delineating the 25-year and the 100-year flood limits if applicable.
 - (m) A note as to whether any part of the development is located within a drainage basin which is upstream from a City water supply lake, and if so, a map at a convenient scale showing the location of the entire development in relation to the drainage basin.
 - (n) If the development is located within a drainage basin which is upstream from a City water supply lake, calculations showing the maximum allowable area covered by impervious surfaces in the area of the subdivision.
 - (o) The locations, dimensions and purposes of all recorded and proposed easements to include necessary sanitary control easement (100') required by Kendall County.
 - (p) The total acreage of open space required by the City's Subdivision Ordinance.
 - (q) If applicable, areas identified as steep slope with a slope of 15% or greater
 - (r) Applicable Notes required under this Chapter.
- n. A minimum of 14 days prior to the Planning and Zoning Commission meeting, and upon receipt of the review comments by staff, or upon failure of the City to provide written comments, the developer may make formal filing to the Planning and Zoning Commission, or after completion and acceptance of the submittal including any revisions or corrections suggested by staff. The formal filing shall contain the following:
- i. Twenty (20) folded copies of the final plat plus one 8½ x 11 black and white copy suitable for making overheads.
 - ii. At least three (3) original signed and sealed Mylars of the final plat for recording, plus an original, notarized affidavit showing the taxes have been paid, including copies of the paid tax statement from the Kendall County Appraisal District.
 - iii. If the plat is approved unconditionally, a check for recording fees as determined by Kendall County is required. If the plat is approved conditionally, the recording fee is paid prior to recordation; and
 - iv. Two copies of the digital file of the final plat in a format specified by the City Manager, and one copy of the final plat in .pdf format.

6. Criteria for Approval

- i. The proposed development conforms to all standards and requirements of the Unified Development Code and variances have been requested for any nonconformance.
- ii. In no way does the development plat create a violation of any applicable regulations of the City or of state or federal law.
- iii. The vehicular and pedestrian system is consistent with adopted transportation plans, including the Master Thoroughfare Plan and the street layout standards set forth in The Unified Development Code,

- iv. The proposed development will not have detrimental impacts on the safety or exercise of permitted uses on adjacent properties.
- v. All required securities and guarantees have been paid, and all applicable agreements with the City have been executed.

7. Decision

- a. The City delegates to the Planning Director the authority to approve development plats and amendments to development plats.
- b. The Planning Director may, for any reason, elect to present the plat to the Planning and Zoning Commission or to City Council, or to both, to approve the development plat.
- c. The Planning Director shall not disapprove the development plat and shall be required to refer any development plat that he does not approve to the Planning and Zoning Commission for consideration.
- d. A final decision shall be rendered within 30 days of filing of the plat application in accordance with the Action within Thirty Days [A.8](#) provision.

8. Applicant Response to Conditions or Disapproval

- a. If a development plat application is approved with conditions or disapproved, the applicant may submit a response to the decision.
- b. Upon receipt of an applicant response to a plat application decision, the Planning Director shall:
 - i. determine if the applicant response meets the following requirements:
 - (a) the response adequately addresses each condition of approval or reason for disapproval
 - (b) the response includes only those changes necessary to address the condition of approval or reason for disapproval
 - (c) the response does not include substantial changes unrelated to the condition of approval or reason for disapproval
 - ii. not later than 15 days after the applicant response is submitted, the Director shall:
 - (a) approve the plat or approve the plat with conditions; or
 - (b) schedule the plat for the Planning and Zoning Commission to approve, approve with conditions or disapprove the plat
- c. If the applicant response as submitted complies with the provisions of this Section and the Planning and Zoning Commission or the Director fails to comply with the time limits for action, the application for the plat is approved.

9. Scope of Approval

- a. The developer shall not proceed with infrastructure improvements until the development plat is approved. No building permits may be issued, and no infrastructure improvements shall be considered accepted by the City except as otherwise provided in this Chapter.
- b. The final approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the City any duty regarding the maintenance or improvement of any purportedly dedicated parts until the City's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

10. Recording

The City shall file the approved development plat for record and provide the developer with one reproducible recorded tracing of the final plat within 14 calendar days of unconditional approval by the Planning and Zoning Commission or satisfaction of the conditional approval as identified by the Planning and Zoning Commission.

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G. CONVEYANCE PLATS

1. Purpose

The purpose of a conveyance plat is to subdivide land and to provide for recordation of same, for the purpose of conveying (i.e., selling) the property without developing it. A conveyance plat may be used to convey the property or interests therein; however, a conveyance plat does not constitute approval for any type of development on the property. A conveyance plat is an interim step in the subdivision and development of land.

A conveyance plat is a boundary survey drawn as a plat. Easements, dedications and reservations may be recorded on a conveyance plat. Engineering plans are not required to process a conveyance plat, unless the developer plans to construct limited improvements on the property. Development fees are not collected at the time of conveyance plat approval.

2. Applicability

A conveyance plat may be used in lieu of a final plat to record the subdivision of property in the following instances:

- a. To record the remainder of a parent tract that is larger than five acres, and that is created by the record platting of a portion of the parent tract, provided that the remainder is not intended for immediate development; or
- b. To record the subdivision of a property into parcels, five acres or smaller in area, that are not intended for immediate development, provided that each parcel has direct access to all required public improvements (water, sanitary sewer, storm sewer) via dedicated easements or direct adjacency to existing infrastructure, each parcel has frontage on an existing public right-of-way, and each parcel has frontage on an existing public right-of-way, and the proposed lot meets the minimum lot dimension requirements as stipulated in this Code.

3. Effect

A conveyance plat does not establish vested rights, since such plat is for conveyance purposes, not development purposes.

4. Certification

The conveyance plat shall contain a certification note on the plat face, as follows:

"This conveyance plat shall not convey any rights to development or guarantee of public utilities, public or private access, or issuance of addressing and permits, without compliance with all subdivision rules and regulations and the approval and recording of a final plat. A conveyance plat is filed for record in the appropriate county clerk office upon administrative approval by the director of development services."

H. RECORD PLAT

1. Recordation of Unapproved Plat Prohibited

The Planning Director shall not file or record any subdivision plat until the plat is approved in accordance with the regulations set forth in this chapter.

2. Eligibility

The following requirements shall be satisfied before a plat shall be filed or recorded.

- a. Documentation of payment of any fee in lieu of parkland dedication
- b. Documentation of acceptance by the City of land dedicated for parks and trails within the development
- c. Documentation of rough proportionality payment identified in the traffic impact assessment
- d. Documentation of payment of any impact fee associated with the proposed development
- e. Payment of any and all bonds and financial guarantees required for the proposed development, or construction, dedication and acceptance of public improvements, should construction be completed in lieu of payment of bonds and financial guarantees.

3. Recording Procedures

- a. Each final plat shall contain the following wording: "VOID UNLESS RECORDED IN THE DEED RECORDS OF KENDALL COUNTY WITHIN 12 MONTHS OF THE DATE OF APPROVAL BY PLANNING AND ZONING COMMISSION."
- b. The final plat of record shall be filed by the city in the plat records of Kendall County within 12 months of final plat approval.
- c. The final plat approval shall expire within 12 months unless the City of Boerne has granted an extension.
- d. The Planning Director may grant up to two extensions of final plat approval, each up to 12 months. All requests for an extension of time must be submitted to the Planning Director at least 30 days prior to expiration of the final plat.
- e. Failure to record the final plat or secure an extension within 12 months shall cause the final plat to be void.
- f. The filing fees for recording the plat shall be paid by the applicant.

I. SUBDIVISION PLAT AMENDMENT

1. Purpose

The purpose of an amending plat shall be to provide an expeditious means of making minor revisions to a recorded plat, consistent with provisions 212.016 of the Texas Local Government Code.

2. Eligibility

- a. Subdivision Plats and Replats are eligible for plat amendment, provided the amendment meets the criteria contained in this section.
 - b. Plat amendments shall only be allowed for any of the following:
 - i. To correct an error in a course, a distance or a real property description that is shown on a preceding plat;
 - ii. To add a course or distance that was omitted on a preceding plat;
 - iii. To indicate monuments set after the death, disability or retirement from practice of the professional engineer or surveyor responsible for setting monuments;
 - iv. To show the change in location or character of a monument previously set;
 - v. To correct an error in the documentation, location or character of a monument previously set;
 - vi. To correct an error in a real property description shown on the preceding plat;
 - vii. To correct an error or omission in a previously approved plat that impacts the lots of the subdivision. This could include lot numbers, acreage, street names and identification of adjacent recorded plats;
 - viii. To relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement; or
 - ix. To amend a lot line between two adjacent lots, provided that:
 - (a) The owners of both impacted lots jointly file the application for plat amendment;
 - (b) Neither lot is abolished and the number of lots does not change;
 - (c) No recorded covenant or restriction is removed; and
 - (d) The amendment does not have materially adverse effects on the property rights of owners of other parcels within the plat in question
 - c. No amendment may be authorized that:
 - i. Changes the uses that are permitted in the preliminary plat;
 - ii. Increases the number of dwelling units;
 - iii. Increases the total square footage of non-residential building area, including all expressions of commercial and industrial uses;
 - iv. Increases the demand for public utilities;
 - v. Decreases the total area of parks and open spaces; or
 - vi. Increases the volume or velocity of stormwater runoff from the development.
 - d. All other changes or amendments to an approved plat shall be submitted as a replat.
- ### 3. Initiation and Completeness Review
- a. A subdivider wishing to amend an approved plat shall file an Amending Plat Application with the Planning Director, together with a copy of the approved plat for which the change is requested.

- b. The Planning Director shall notify the applicant by writing within 10 days of receipt of the plat submittal whether the submittal has been deemed complete. The mailing date of the notification of completeness shall serve as the filing date.
- c. Amending Plats may be approved by the Planning Director without filing a new plat.

4. Plat Amendment Submittal Requirements

Applications for Plat Amendments shall require the following:

- a. Completed Plat Amendment Application and Code Compliance Forms.
- b. A tax certificate that verifies ownership, and that all taxes are paid and up to date, shall be submitted with the required amendment. Should the amendment require verification of another party, or of the validity of the requested correction, such documentation shall be included as a part of the submittal.
- c. The applicant shall pay all fees associated with a plat amendment at the time of the submittal.

5. Criteria for Approval

- a. An application for plat amendment has been filed by the Planning Director and deemed complete.
- b. The applicant has paid all fees associated with an application for a minor subdivision plat.
- c. Original official tax certificates, showing no outstanding or delinquent taxes, have been submitted for all parcels contained within the plat.
- d. The amendment does not alter the density, design, boundaries, street types, public facilities or right of way assignments of the previously approved plat.

6. Decision

Notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of a plat amendment. The plat amendment shall be processed by the Planning Director in the same manner as a minor plat.

7. Recording a Plat Amendment

- a. If the plat being amended has been recorded, the amending plat shall be clearly marked as follows:
- b. Amending plat of (_____ [PLAT NUMBER] and _____ [NAME]). This plat amends the plat previously recorded in the plat records of Kendall County, Volume _____, Page _____.
- c. The amending plat shall then be recorded if all requirements have been met, in accordance with the requirements for recording a plat.
- d. If the plat being amended has not been previously recorded, the approved replat shall be annotated with the following statement:

“This plat includes amendments approved by the Planning Director.”

J. REPLAT

1. Classification

A replat shall be classified as one of the following:

a. Minor replat

All minor replats shall follow the procedure for a minor plat.

b. Replat of recorded subdivision plat, not vacated

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat, provided that the replat:

- i. Is signed and acknowledged by all the owners of the property being replatted;
- ii. Is approved following a public hearing; and
- iii. Does not attempt to amend or remove any covenants or restrictions that run with the land.

2. Pre-Application Conference Required

For all replats other than minor replats, a Pre-Application Conference is required. The applicant and the Planning Director shall attend the conference. The Planning Director shall provide the applicant with the Plat Application and Code Compliance forms and shall review the Replat Checklist with the applicant to determine the documents that will be required for the Replat Submittal. The Replat Checklist shall be signed by both the Planning Director and the applicant.

3. Initiation and Completeness Review

- a. Copies of the replat application shall be submitted to the Planning Director not less than 30 days prior to the Planning and Zoning Commission meeting at which consideration is desired.
- b. The Planning Director shall receive applications for replat and conduct a completeness review, in accordance with the submittal requirements for a Replat.
- c. The replat shall be considered officially filed after it is accepted by the Planning Director and found to be in compliance with the submittal requirements. The Planning Director shall provide notification to the applicant within 10 days as to whether the application is deemed complete. The stamped mailing date of the notification shall serve as the filing date for the replat. From this official filing date on which completeness is determined, the Commission shall have 30 days to act on the replat application.

4. Submittal Requirements

Except for certain replats, an application for a replat shall be bound by the same submittal requirements as an application for a subdivision plat.

5. Criteria for Approval and Decision

- a. Except for certain replats, the criteria for approval and decision shall be the same as those for a subdivision plat.

6. Public hearing and written notice requirements for certain replats

- a. This sub-section applies to replats where:
 - i. Any part of the area to be replatted was limited by an interim or permanent zoning classification to single-family or duplex residential use at any time during the preceding five years; and
 - ii. Any lot in the preceding plat was limited by deed restriction to single-family or duplex residential use.
 - b. Notice of a public hearing regarding replats subject to this sub-section shall be as follows:
 - i. Notice of the hearing shall be given before the 15th day before the date of the hearing by:
 - (a) Publication in the official newspaper of the city; and
 - (b) By written notice to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted as indicated on the city's most recently approved city or county tax roll.
 - ii. If the proposed replat requires a variance and is protested by petition in accordance with state law, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the commission or council members present.
 - iii. For a legal protest or petition to be valid:
 - (a) The petition must be signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area but within the original subdivision;
 - (b) The petition must be submitted to the commission or council, or both, prior to close of the public hearing; and
 - (c) The signatures on the petition must correspond with actual names listed on the most recently approved municipal tax roll or appraisal district records.
7. The Action within Thirty Days provision ([A.8](#)) of this Section applies to replats.
8. Applicant Response to Conditions or Disapproval
- i. If a development plat application is approved with conditions or disapproved, the applicant may submit a response to the decision.
 - ii. Upon receipt of an applicant response to a plat application decision, the Planning Director shall:
 - (a) determine if the applicant response meets the following requirements:
 - (i) the response adequately addresses each condition of approval or reason for disapproval
 - (ii) the response includes only those changes necessary to address the condition of approval or reason for disapproval
 - (iii) the response does not include substantial changes unrelated to the condition of approval or reason for disapproval
 - (b) not later than 15 days after the applicant response is submitted, the Director shall:
 - (i) approve the plat or approve the plat with conditions; or

- (ii) schedule the plat for the Planning and Zoning Commission to approve, approve with conditions or disapprove the plat
- iii. If the applicant response as submitted complies with the provisions of this Section and the Planning and Zoning Commission or the Director fails to comply with the time limits for action, the application for the plat is approved.

9. Exemptions

Compliance with this section is not required for approval of a replat if the area to be replatted was designated or reserved for a use other than single or duplex family residential use by notation on the plat or in the legally recorded restrictions applicable to the plat.

10. Denial of replats

If the Commission determines that the replat does not comply with the requirements of this chapter, then the replat shall be denied. Failure or refusal to comply with all conditions of approval attached to the replat shall automatically cause the replat to be deemed denied as of the date of its conditional approval. The developer, at any time thereafter, may submit a new design for approval, following the same procedures as required for the original application, including the payment of application fees.

11. Recording of replat

- a. Prior to recording the replat, the applicant shall demonstrate compliance with requirements of this ordinance, including compliance with all comments and all conditions of approval.
- b. Replats shall be recorded within one year from the approval date. The Commission may extend the recording deadline by up to one year upon written request of the developer.
- c. The city shall record the plat with Kendall County when the following are complete:
 - i. Three copies of the plat on mylar reproducible film or other permanent material have been submitted and the plat has been signed by the Planning Director.
 - ii. All necessary fiscal agreements have been approved by the city;
 - iii. All fees have been received;
 - iv. The Planning Director has approved all engineering plans and specifications, if applicable;
 - v. An electronic or digital copy of plat drawing in a format acceptable to the city has been provided;
 - vi. Original official tax certificates, showing no outstanding or delinquent taxes, from Kendall County for all parcels contained within the plat have been submitted; and
 - vii. A community facilities contract for the public infrastructure has been executed by the owner and contractor, if applicable.

K. PLAT VACATION

1. Generally

The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat. If lots within the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of the lots in the plat, upon approval in the manner prescribed for the original plat.

2. Initiation and Completeness Review

- a. The subdivider or owner of any lot in an approved subdivision shall initiate a plat vacation by filing a petition and a declaration with the Planning Director to vacate the plat with respect to the property in question.
- b. The subdivider may file the vacating declaration and an application requesting re-subdivision at the same time, so that the two requests may be processed simultaneously.
- c. The Planning Director shall review the Petition for Plat Vacation for completeness, according to the submittal requirements
- d. The Planning Director shall make a determination of completeness in writing within 10 days of receipt of the Petition. The mailing date of this written notification shall constitute the filing date for the Petition for Plat Vacation.
- e. If the Petition for Plat Vacation and a new plat application are jointly filed, the filing fee for plat vacation shall be waived.

3. Submittal Requirements for Plat Vacation

- a. Petition for Plat Vacation and Code Compliance Forms. The applicant shall complete these forms and include them in the submittal.
- b. Fees. The applicant shall pay the applicable plat vacation fee at the time when the application is submitted to the Planning Director.

4. Decision

- a. The Planning Director shall present the Petition for Plat Vacation at a Planning and Zoning Commission meeting within 30 days of the filing date of the Petition for Plat Vacation.
- b. The Commission shall approve, approve with conditions or deny the Petition based on the Approval Criteria for Plat Vacation.

5. Approval Criteria for Plat Vacation

The Commission shall approve a Petition for Plat Vacation unless it will materially injure the rights of any nonconsenting public agency with regard to public improvements; or

6. Recording a Vacated Plat

- a. The vacated plat shall have the word “vacated” written on it, as well as a reference to the volume and page at which the vacating instrument is recorded.
- b. Upon execution and recording of the vacation, the vacated plat has no effect.

7. Re-subdivision of a Vacated Plat

- a. A vacated plat may be re-subdivided, once the vacation of the original plat is recorded.

- b. Re-subdivision of a previously vacated plat shall follow the procedures prescribed for plat initiation in this chapter. However, a copy of the vacating declaration shall accompany any application for re-subdivision.

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2.9. CONSTRUCTION PROCEDURES

A. CONSTRUCTION PERMITS

1. Tree Removal and land clearing permit

a. Permits and Inspection

- i. Permits are required prior to the removal of any trees from a tract of land, unless otherwise indicated in this section. The Tree Removal Permit shall be either A or B and C as identified below:
 - (a) A Building Permit
 - (b) A Standard or Heritage Tree Removal Permit
 - (c) A Tree Removal Permit
- ii. The Permit application and required attachments shall be submitted with the fee established by City Council to the Code Enforcement office for review.
- iii. Prior to issuance of any Permit the property shall be inspected by either a representative of the Planning Department or Code Enforcement department.

b. Building Permits

i. Commercial

- (a) A property/developer shall submit a Tree Preservation Plan (TPP) at such time they submit a building permit application for a commercial, industrial or multi-family development on any real property in the City of Boerne.
- (b) The Building Permit shall not be issued until such time as the City Manager has approved the TPP, the Code Enforcement Department has been notified and the required tree protection is in place and approved by the Code Enforcement department. If, prior to completion of construction, the tree protection is removed, a Stop Work Order will be imposed until the tree protection has been replaced and approved.
- (c) Tree Removal Permit shall be applied for and approved before removal of any Standard or Heritage tree.

ii. Residential

- (a) A property owner who plans to construct a residence on any real property shall apply for a Building Permit. The Permit application shall include a plot plan, in lieu of a TPP, the plot plan will include the identification of Standard or Heritage trees located on the lot. Movement of the proposed structure on the lot within the building envelope may be adjusted by the City Manager taking into consideration the location of the Standard trees on the lot. Mitigation of Standard trees removed on residential lots is not required.
- (b) Heritage trees shall be preserved if it was identified on the final subdivision plat that contains the lot.

c. Standard or Heritage Tree Removal Permit

- i. Standard or Heritage Tree Removal Permit shall be applied for and approved before removal of any Standard or Heritage tree from any real property within the City. An application for the removal of a Standard or Heritage tree shall be made by the owner/developer of the property on which such tree is located.

- ii. When an applicant submits a Standard or Heritage Tree Removal Permit application, they shall present either a TPP or, if a TPP is not required, a survey or plot plan identifying the Standard and Heritage trees and trees to be removed to the City Manager.
- iii. A valid reason for removal of a Standard or Heritage tree shall be submitted to the City Manager in writing.
- iv. If on-site Legacy trees are to be used for mitigation for removal of Standard or Heritage trees, the mitigating trees shall be identified on the Plan.
- v. If mitigation includes replacement trees, the Permit shall include a tree replacement plan that reflects the location, circumference and placement of replacement trees. If payment shall be made in lieu of replacement trees, a statement of such shall be attached.
- vi. The Standard or Heritage Tree Removal Permit shall not be issued until such time as a City Manager approval has been received by the Code Enforcement department and the required tree protection, if necessary, is in place and approved by the Code Enforcement department.
- vii. Such other information as may be reasonably required by the City Manager.

d. Standard and or Heritage Tree Removal Permit Approval

The City Manager may approve an application to remove a Standard or Heritage tree after determining that the tree:

- i. Prevents reasonable access to the property; or
- ii. Prevents a reasonable use of the property; or
- iii. Is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; or
- iv. Is dying or dead;
- v. the restoration to sound condition is not practical; or
- vi. disease may be transmitted to other trees and endanger their health; or
- vii. For a tree located on public property or a public street or easement:
 - (a) prevents the opening of necessary vehicular traffic lanes in a street or alley; or
 - (b) prevents the construction of utility or drainage facilities that may not feasibly be rerouted.

e. Tree Removal Permit

If a property owner desires to selectively remove non-Legacy trees or Legacy trees that are smaller than 37 TC inches from any real property that does not require a Building Permit (is not being developed), they shall be required to obtain a Tree Removal Permit. The removal of trees that are dead or dying (as identified by an arborist or landscape architect) and cannot be restored to sound condition do not require a Tree Removal Permit.

- i. A valid Tree Removal Permit application must be filed with the City Manager and approved by the Planning Department before a property owner begins to remove trees.
- ii. The TPP shall be prepared without items (3), (10), and (11) unless they are existing on the lot.
- iii. The property shall be inspected by either a representative of the Planning Department or the Code Enforcement department. After said inspection the Tree Removal Permit shall be issued if the trees marked on the site correspond to the submitted on the TRP at which time the appropriate trees can be removed.

f. Inspections

The Code Enforcement department shall inspect each site for conformance with the approved Tree Preservation Plan prior to the issuance of a Certificate of Occupancy.

g. Tree Preservation Plan Requirements

The Tree Preservation Plan (TPP) shall be prepared by a Certified Arborist or Landscape Architect and shall include the following:

- i. The date, scale, north point, project title, and name of property owner.
- ii. The location of existing lot lines, setback lines and dimensions of the lot.
- iii. The location of all proposed buildings and parking areas on the lot/tract of land.
- iv. The location and size of existing and proposed streets and alleys and existing and proposed easements on or adjacent to the lot.
- v. The approximate center lines of existing water courses, the location of the 100 year flood plain, and the approximate location of significant drainage features on the lot.
- vi. All Standard or Heritage trees as defined by this ordinance shall be numbered, marked with a metal tag and enumerated by species on the site as well as on the plan.
- vii. The plan shall identify those Legacy trees for which a removal Permit shall be requested as well as and a mitigation plan.
- viii. The trees shall be measured using trunk circumference (TC).
- ix. The following information shall be submitted with the TPP:
 - (a) A list of Standard or Heritage trees that show the species, classification, and the TC of the tree;
 - (b) A list of those Standard or Heritage trees that may have been identified for removal on the plan by species and TC;
 - (c) If on-site trees are to be used for mitigation for the removal of a Standard or Heritage tree the TPP shall include a list of trees that are to be suggested for mitigation by species and TC;
 - (i) If replacement trees are to be planted on-site for the removal of a Standard or Heritage tree, the TPP shall contain a list of those trees by species and TC.
- x. Approximate delineation of the root protection zones and notes indicating how the applicant plans to protect from damage during grading and construction the existing trees which are proposed to be retained.
- xi. A description of the proposed watering methods for each part of a landscaped area.
- xii. Other proposed landscape plants and features.

h. Plan Review by City Manager

The City Manager shall review the Tree Preservation Plan (TPP) within 10 working days to determine whether it meets the requirements of this Ordinance. Upon completion of this review, the City Manager shall approve or disapprove the Tree Preservation Plan, and shall notify the Code Enforcement office of such.

2. Grading Permit

a. Applicability

- i. A grading permit shall be required prior to the disturbance of land by grading, filling, or dredging within the city or its extraterritorial jurisdiction.
- ii. Unless otherwise indicated, no person may commence with the disturbance of 1.0 acre or more of land unless that person has a valid grading permit from the City for such disturbance.

b. Eligibility

- i. Approval of one of the following is required before a grading permit may be granted:
 - (a) Preliminary Plat
 - (b) Development Plat
 - (c) Combined Preliminary/Final Plat
 - (d) Minor Plat
 - (e) Replat
- ii. A tree removal and land clearing permit is required before a grading permit may be granted.
- iii. All grading completed prior to the final plat is at the risk of the developer/applicant and is subject to change based on the approval of the final plat by the city planning and zoning commission.
- iv. A grading permit is authorization for grading only. No utility work can take place under a grading permit.
- v. All work must be in conformance with the approved tree removal permit, tree protection plan and tree mitigation plan.
- vi. All erosion control and tree protection devices must be in place and properly maintained.

c. Grading and Stormwater Management

- i. An applicant for a grading permit shall submit grading plans and a drainage study prepared by a professional engineer with the permit application. The City Manager or his or her designee shall review these documents for conformance with drainage design policies of the City.
- ii. Any fill material placed in existing or proposed right-of-way must conform to the requirements of the city's standard specifications for street and storm drain construction. If testing and certification is not performed in conjunction with city infrastructure inspection, the city may require the same by an independent soils laboratory and/or removal of the fill material at the expense of the applicant.
- d. The placement of fill shall be in strict conformance to the plans and specifications approved for the project.
- e. All construction activity, including grading, which falls within the floodplain is subject to the floodplain regulations of the City and requires a Floodplain Development Permit. Unless otherwise indicated and authorized by the City, no grading shall take place in the 100-year floodplain.
- f. Penalty
 - i. A person commits an offense if land disturbance of an area greater than 1.0 acres occurs without a valid grading permit.

- ii. No other permit or approvals may be granted to a person or for a property standing in violation of the City's grading permit requirement.

3. Floodplain Development Permit

a. Establishment of Development Permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this chapter.

b. Permit procedures.

- i. Application for a floodplain development permit shall be presented to the floodplain administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
- (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
- (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of the City;
- (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
- (e) Maintain a record of all such information in accordance with this Section

- ii. Approval or denial of a floodplain development permit by the floodplain administrator shall be based on all of the provisions of this chapter and the following relevant factors:

- (a) The danger to life and property due to flooding or erosion damage;
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (c) The danger that materials may be swept onto other lands to the injury of others;
- (d) The compatibility of the proposed use with existing and anticipated development;
- (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

c. Variance Procedures

- i. The zoning board of adjustments, as established by the community, shall hear and render judgment on requests for variances from the requirements of this chapter.
- ii. The appeal board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.
- iii. Any person or persons aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.
- iv. The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- v. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this chapter.
- vi. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 9-43(2) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
- vii. Upon consideration of the factors noted above and the intent of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (section 9-3).
- viii. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- ix. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- x. Prerequisites for granting variances:
 - (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon:
 - (i) showing a good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (c) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- xi. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that
 - (a) the criteria outlined in subsections (1)–(9) are met, and

- (b) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

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4. Construction Release Permit

a. Construction Release Permit Required

- i. A Construction Release Permit allows for the construction of public streets, utilities, drainage and other improvements.
- ii. A Construction Release Permit is required for all on-site construction other than grading, tree removal and floodplain development, each of which is separately permitted.

b. Pre-Construction Meeting

- i. The pre-construction meeting shall be attended by the City Engineer and the project developer and/or prime contractor.
- ii. The developer and/or prime contractor shall provide the City Engineer with a general construction schedule and a copy of the approved final plat before or at the pre-construction meeting.
- iii. The participants shall discuss:
 - (a) The sequence of construction activity
 - (b) Start dates and schedule of events
 - (c) Erosion and sedimentation controls to be used on site
 - (d) Traffic control barricades to be used during construction
 - (e) Site supervision
 - (f) Emergency response
 - (g) Special conditions or provisions applicable to the project
 - (h) Requirements for award of Construction Release Permit
 - (i) Requirements for final acceptance of public facilities and improvements
- iv. The City Engineer shall provide the developer/contractor with a Checklist of Submittal Requirements for obtaining a Construction Release Permit at the Pre-Construction Meeting.
- v. The Checklist of Submittal Requirements shall be completed at the Pre-Construction Meeting and shall be signed and dated by the City Engineer and the developer and/or prime contractor.

c. Submittal Requirements

An application for a Construction Release Permit shall include each of the following:

- i. A completed Application Form as provided by the City.
- ii. The Checklist of Submittal Requirements received at the Pre-Construction Meeting, signed by the City Engineer and the developer and/or the prime contractor.
- iii. Payment bond for 100% of the cost of the project.
- iv. A two-year maintenance bond for 50% of the cost of the project.
- v. Payment of all applicable fees.
- vi. A copy of the itemized engineering contract for the project, with the engineer's seal affixed to it.
- vii. General construction schedule for the project.

d. Criteria for Approval

A Construction Release Permit shall be granted and construction plans shall be released only under the following conditions:

- i. The final plat for the property has been approved and is still in effect;
 - ii. The construction plans have been approved and are still in effect;
 - iii. The developer and prime contractor(s) have participated in a pre-construction meeting with the City Engineer; and
 - iv. All monies due to the City have been paid, including all bonds and fees.
- e. Effect
 - i. A Construction Release Permit authorizes the applicant to begin development of the site, in accordance with the approved plans and with the standards of the City.
 - ii. The granting of a Construction Release Permit confirms that the application conforms to all requirements of the city code that pertain to the construction of the proposed facilities.
- f. Expiration and Renewal
 - i. A Construction Release Permit expires three years after the date of its approval unless:
 - (a) the Planning and Zoning Commission sets a later expiration date when it approves the plat;
 - (b) site work has commenced and has been consistent during the three years following approval; or
 - (c) the City Engineer extends the expiration date of the Permit.
 - ii. An applicant may request that the City Engineer extend the expiration date of a Construction Release Permit by filing a written request, accompanied by justification, with the City Engineer prior to the date of permit expiration.
 - iii. The City Engineer may extend the expiration date of the permit once for a period of one year if the director determines:
 - (a) there is good cause for the extension;
 - (b) there has not been a significant change in development conditions affecting the plan; and
 - (c) the plan continues to comply with the criteria for its approval and release.
- g. Appeals
 - i. An interested party may appeal the City Engineer's decision regarding Construction Release Permits to the Planning and Zoning Commission.
 - ii. The City Engineer shall give notice under of the Commission's consideration of an appeal, in accordance with the notice requirements of the UDC.
 - iii. The Planning and Zoning Commission shall conduct a public hearing on an appeal before taking action.
 - iv. An interested party may appeal the Planning and Zoning Commission's decision regarding Construction Release Permits to the city council.

B. CONSTRUCTION PROCEDURE

1. Generally

- a. Contractor shall be responsible for negotiations of any waivers or alternate arrangements required to enable transportation of materials to the site.
- b. Maintain conditions of access road to site such that access is not hindered as the result of construction related deterioration.
- c. If, during the course of construction, evidence of deposits of historical or archaeological interest is found, the Contractor shall cease operations affecting the find and shall notify the Owner. No further disturbance of the deposits shall ensue until the Contractor has been notified by the Owner that Contractor may proceed. The Owner will issue a Notice to Proceed only after The Texas Historical Commission has surveyed the find and made a determination to the Owner. Compensation to the Contractor, if any, for lost time or changes in construction resulting from the find, shall be determined in accordance with changed or extra work provisions of the Contract Documents."

2. Order of Construction and Construction Schedule

- a. Construction operations will be scheduled to allow the City of Boerne uninterrupted operation of existing adjacent facilities. Coordinate connections with existing work to ensure timely completion of interfaced items.
- b. At no time shall Contractor or his employees modify operation of the existing facilities or start construction modifications without approval of the City of Boerne and Owner except in emergency to prevent or minimize damage.
- c. Within 10 days after award of Contract, submit for approval a critical path type schedule. Account for schedule of Subcontracts. Include proper sequence of construction, various crafts, purchasing time, shop drawing approval, material delivery, equipment fabrication, startup, demonstration, and similar time-consuming factors. Show on schedule as a minimum, earliest starting, earliest completion, latest starting, latest finish, and free and total float for each task or item.
- d. Evaluate schedule no less than monthly. Update, correct, and rerun schedule and submit to Engineer in triplicate with pay application to show rescheduling necessary to reflect true job conditions. When shortening of various time intervals is necessary to correct for behind schedule conditions, indicate steps to implement to accomplish work in shortest schedule. Information shall be submitted to Engineer in writing with revised schedule.
- e. If Contractor does not take necessary action to accomplish work according to schedule, he may be ordered by Owner in writing to take necessary and timely action to improve work progress. Order may require increased work forces, extra equipment, extra shifts or other action as necessary. Should Contractor refuse or neglect to take such action authorized, under provisions of this contract, Owner may take necessary actions including, but not necessarily limited to, withholding of payment and termination of contract.
- f. Upon receipt of approved "Work Schedule," within 10 days, submit to Engineer an estimated payment schedule by each month of project duration. Include a composite curve to show estimated value of work complete and stored materials less specified retainage. Establish key months when work will be 50, 80, 90, and 100 percent complete. During the course of work, update with new composite curves at key months or whenever variation is expected to be more than plus or minus 10 percent. Retain original or previous composite curves as dashed curves on all updates. Include a heavy plotted curve to show ACTUAL payment curve on all updates.

3. Pre-Construction Conference

- a. A preconstruction conference shall be conducted at Boerne City Hall after plans have been approved by Boerne Public Works.
- b. Engineer will contact Boerne Public Works and request that the Preconstruction Conference be scheduled 2 weeks in advance of the proposed date. Contractor's Project Manager and Project Superintendent and Contractor's Subcontractor Representatives shall attend.
- c. Owner and Engineer representatives shall attend the Preconstruction Conference.

4. Project Meetings

- a. The Engineer will conduct construction meetings involving:
 - i. Contractor's project manager.
 - ii. Contractor's project superintendent.
 - iii. Owner's designated representative(s).
 - iv. Engineer's designated representative(s).
 - v. Contractor's subcontractors as appropriate to the work in progress.
 - vi. Representative of the City of Boerne.
- b. Meetings conducted as required by Owner.
- c. The Engineer will take meeting minutes and submit copies of meeting minutes to participants and designated recipients identified at the Preconstruction Conference. Corrections, additions or deletions to the minutes shall be noted and addressed at the following meeting.
- d. The Engineer will schedule meetings for most convenient time frame.
- e. The Engineer will have available at each meeting full chronological file of all previous meeting minutes.
- f. The Contractor shall have available at each meeting up-to-date record drawings.

5. Construction Plan Submittals

a. Summary

Section Includes:

- i. Mechanics and administration of the submittal process for:
 - (a) Shop drawings
 - (b) Samples
 - (c) Miscellaneous submittals
 - (d) Operation and maintenance manuals
- ii. Related Sections include but are not necessarily limited to:
 - (a) Division 0 - Bidding Requirements, Contract Forms, and Conditions of the Contract.
 - (b) Division 1 - General Requirements.
 - (c) Sections in Divisions 2 through 16 identifying required submittals.

b. Shop Drawings

- i. All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work

- ii. Product data and samples are Shop Drawing information.
- iii. Miscellaneous Submittals:

Representative types of miscellaneous submittal items include but are not limited to:

- (a) Construction schedule.
- (b) Concrete, soil compaction, and pressure test reports.
- (c) HVAC test and balance reports.
- (d) Installed equipment and systems performance test reports.
- (e) Manufacturer's installation certification letters.
- (f) Instrumentation and control commissioning reports.
- (g) Warranties.
- (h) Service agreements.
- (i) Construction photographs.
- (j) Survey data.
- (k) Cost breakdown (Schedule of Values)

c. Transmittals

i. Shop Drawings, Samples and Operation and Maintenance Manuals:

- (a) Transmit all submittals to Engineer.
- (b) Utilize two copies of attached Exhibit "A" to transmit all shop drawings and samples.
- (c) Utilize two copies of attached Exhibit "B" to transmit all Operation and Maintenance Manuals.
- (d) All transmittals must be from Contractor and bear his approval stamp. Transmittals will not be received from or returned to subcontractors, or suppliers.
 - (i) Shop drawing transmittal stamp shall read "(Contractor's Name) has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval as stipulated under the General Conditions". Transmittals will not be received from or returned to subcontractors.
 - (ii) Operation and Maintenance Manual transmittal stamp may be Contractor's standard approval stamp.
- (e) Provide submittal information defining specific equipment or materials utilized on the project. Generalized product information not clearly defining specific equipment or materials to be provided will be rejected.
- (f) Calculations required in individual specification sections will be received for information purposes only and will be returned stamped "Engineer's Review Not Required" to acknowledge receipt.
- (g) Engineer will transmit copies to the City of Boerne after reviewing and stamping.
- (h) Submittal schedule:
 - (i) Schedule of shop drawings:
 - Submitted and approved within 20 days of receipt of Notice to Proceed.
 - Account for multiple transmittals under any specification section where partial submittals will be transmitted.

(ii) Shop drawings:

Submittal and approval prior to 50 percent completion.

(iii) Operation and Maintenance Manuals and Equipment Record Sheets:

Initial submittal within 60 days after date shop drawings are approved.

ii. Miscellaneous Submittals:

- (a) Transmit under Contractor's standard letter of transmittal or letterhead.
- (b) Submit in triplicate or as specified in individual specification section.
- (c) Transmit to Engineer.
- (d) Provide carbon copy of letter of transmittal to City of Boerne.

Exception for concrete, soils compaction and pressure test reports. Transmit one copy to City of Boerne.

d. Preparation of Submittals

i. Shop Drawings:

(a) Scope of any letter of transmittal:

- (i) Limited to one Specification Section.
- (ii) Do not submit under any Specification Section entitled (in part) "Basic Requirements".

(b) Numbering letter of transmittal:

- (i) Include as prefix the specification section number followed by "-xx" beginning with "01".
- (ii) If more than one submittal under any specification section, number transmittals consecutively.

(c) Describing transmittal contents:

- (i) Provide listing of each component or item in submittal capable of receiving an independent review action.
- (ii) Identify for each item:
 - Manufacturer and Manufacturer's drawing or data number.
 - Contract Document tag number(s).
 - Contract Drawing Section or detail number if appropriate. 4)
 - Specification Article/Paragraph number if appropriate.

ii. Resubmittals:

- (a) Number with original root number and a suffix letter starting with "A" on a (new) duplicate transmittal form.
- (b) Do not increase the scope of any prior transmittal.
- (c) Account for all components of prior transmittal.
 - (i) If items in prior transmittal received "A" or "B" Action code, list them and indicate "A" or "B" as appropriate.

- (ii) Do not include submittal information for items with prior "A" or "B" Action in transmittal.
- (d) Indicate "Outstanding-To Be Resubmitted At a Later Date" for any prior "C" or "D" Action item not included in resubmittal.
- (e) Obtain Engineer's prior approval to exclude items.
- (f) For 8-1/2 x 11 IN size sheets, provide four copies of each page for Engineer plus the number required by the Contractor. The number of copies required by the Contractor will be defined at the Preconstruction Conference, but shall not exceed 10.
- (g) For items not covered herein submit one reproducible transparency and one print of each drawing until approval is obtained. Utilize mailing tube; do not fold. The Engineer will mark and return the reproducible to the Contractor for his reproduction and distribution. Submit four copies of approved reproducible to Engineer.
- (h) Provide clear space (3 IN SQ) for Engineer and (3 IN SQ) for City of Boerne stamping of each component defined herein.
- (i) Contractor shall not use red color for marks on transmittals. Duplicate all marks on all copies transmitted, and ensure marks are photocopy reproducible. Outline Contractor marks on reproducible transparencies with a rectangular box.
- (j) Transmittal contents:
 - (i) Coordinate and identify shop drawing contents so that all items can be easily verified by the Engineer.
 - (ii) Identify equipment or material use, tag number, drawing detail reference, weight, and other project specific information.
 - (iii) Provide sufficient information together with technical cuts and technical data to allow an evaluation to be made to determine that the item submitted is in compliance with the Contract Documents.
 - (iv) Submit items like equipment brochures, cuts of fixtures, product data sheets or catalog sheets on 8-1/2 x 11 IN pages. Indicate exact item or model and all options proposed.
 - (v) Include legible scale details, sizes, dimensions, performance characteristics, capacities, test data, anchoring details, installation instructions, storage and handling instructions, color charts, layout drawings, parts catalogs, rough-in diagrams, wiring diagrams, controls, weights and other pertinent data. Arrange data and performance information in format similar to that provided in Contract Documents. Provide, at minimum, the detail provided in the Contract Documents.
 - (vi) If proposed equipment or materials deviate from the Contract Drawings or Specifications in any way, clearly note the deviation and justify the said deviation in detail in a separate letter immediately following transmittal sheet.

iii. Samples

- (a) Identification
 - (i) Identify sample as to transmittal number, manufacturer, item, use, type, project designation, tag number, Standard Specification section or drawing detail reference, color, range, texture, finish and other pertinent data.

- (ii) If identifying information cannot be marked directly on sample without defacing or adversely altering samples, provide a durable tag with identifying information securely attached to the sample.
 - (b) Include application specific brochures, and installation instructions.
 - (c) Provide Contractor's stamp of approval on samples or transmittal form as indication of Contractor's checking and verification of dimensions and coordination with interrelated work.
 - (d) Resubmit samples of rejected items.
- iv. Operation and Maintenance Manuals
- (a) Number transmittals for Operation and Maintenance Manual with original root number of the approved shop drawing for the item.
 - (b) Submit two copies until approval is received.
 - (c) Identify resubmittals with the original number plus a suffix letter starting with "A."
 - (d) Submit Operation and Maintenance Manuals printed on 8-1/2 x 11 IN size heavy first quality paper with standard three-hole punching and bound in stiff metal hinged binder constructed as a three-ring style. Provide binders with titles on front and on spine of binder. Tab each section of manuals for easy reference with plastic-coated dividers. Provide index for each manual. Provide plastic sheet lifters prior to first page and following last page.
 - (e) Reduce drawings or diagrams bound in manuals to an 8-1/2 x 11 IN or 11 x 17 IN size. However, where reduction is not practical to ensure readability, fold larger drawings separately and place in vinyl envelopes which are bound into the binder. Identify vinyl envelopes with drawing numbers.
 - (f) Transmittal Content:
 - (i) Submission of Operation and Maintenance Manuals is applicable but not necessarily limited to:
 - Major equipment.
 - Equipment used with electrical motor loads of 1/6 HP nameplate or greater.
 - Specialized equipment including valves and instrumentation and control system components for HVAC and process systems such as meters, recorders, and transmitters.
 - Valves greater than 12 IN DIA.
 - 5) Water control gates.
 - (ii) Operation and maintenance manuals shall include, but not necessarily be limited to, the following detailed information, as applicable:
 - Equipment function, normal operating characteristics, limiting operations.
 - Assembly, disassembly, installation, alignment, adjustment, and checking instructions.
 - Operating instructions for start-up, routine and normal operation, regulation and control, shutdown, and emergency conditions.
 - Lubrication and maintenance instructions.
 - Guide to "troubleshooting."
 - Parts list and predicted life of parts subject to wear.
 - Outline, cross-section, and assembly drawings; engineering data; and electrical diagrams, including elementary diagrams, wiring

diagrams, connection diagrams, word description of wiring diagrams and interconnection diagrams.

- Test data and performance curves.
- A list of recommended spare parts with a price list and a list of spare parts provided under these specifications.
- Copies of installation instructions, parts lists or other documents packed with equipment when delivered.
- Instrumentation or tag numbers relating the equipment back to the Contract Documents.
- Include a filled-out copy of the Equipment Record Sheet, Exhibits C1 and C2 as the first page(s) of each Operation and Maintenance Manual. Complete maintenance requirements in detail. Simple reference to the Manual is not acceptable.
- For equipment items involving components or subunits, an Equipment Record Sheet for each operating component or subunit is required.

6. Construction Plan Review

a. Shop Drawings and Samples

- i. Items within transmittals will be reviewed for overall design intent and will receive one of the following actions by Engineer and City of Boerne:
 - (a) FURNISH AS SUBMITTED.
 - (b) FURNISH AS NOTED (BY ENGINEER and CITY OF BOERNE).
 - (c) REVISE AND RESUBMIT.
 - (d) REJECTED.
 - (e) ENGINEER'S REVIEW NOT REQUIRED.
- ii. Transmittals received will be initially reviewed to ascertain inclusion of Contractor's approval stamp. Drawings not stamped by the Contractor or stamped with a stamp containing language other than that specified in Paragraph 1.3-A.4.a., will not be reviewed for technical content and will be returned without any action.
- iii. Transmittals returned with Action "A" or "B" are considered ready for fabrication and installation. If for any reason a transmittal that has an "A" or "B" Action is resubmitted, it must be accompanied by a letter defining the changes that have been made and the reason for the resubmittal. Destroy or conspicuously mark "SUPERSEDED" all documents having previously received "A" or "B" Action that are superseded by a resubmittal.
- iv. Transmittals with Action "A" or "B" combined with Action "C" (Revise and Resubmit) or "D" (Rejected) will be individually analyzed giving consideration as follows:
 - (a) The portion of the transmittal given "C" or "D" will not be distributed (unless previously agreed to otherwise at the Preconstruction Conference). One copy or the one transparency of the "C" or "D" drawings will be marked up and returned to the Contractor. Correct and resubmit items so marked.
 - (b) Items marked "A" or "B" will be fully distributed.
 - (c) If a portion of the items or system proposed are acceptable, however, the major part of the individual drawings or documents are incomplete or require revision, the entire submittal may be given "C" or "D" Action. This is at the sole discretion of the Engineer. In this case, some drawings may contain relatively few or no comments or the statement, "Resubmit to maintain a complete package." Distribution to the Owner and field will not be made (unless previously agreed to otherwise).
- v. Failure to include any specific information specified under the submittal paragraphs of the specifications will result in the transmittal being returned to the Contractor with "C" or "D" Action.
- vi. Transmittals such as submittals which the Engineer or City of Boerne considers as "Not Required," submittal information which is supplemental to but not essential to prior submitted information, or items of information in a transmittal which have been reviewed and received "A" or "B" Action in a prior transmittal, will be returned with Action "E. Engineer's Review Not Required."
- vii. Samples may be retained for comparison purposes. Remove samples when directed. Include in bid all costs of furnishing and removing samples.
- viii. Approved samples submitted or constructed, constitute criteria for judging completed work. Finished work or items not equal to samples will be rejected.

b. Operation and Maintenance Manuals

- i. Engineer and City of Boerne will review and indicate one of the following review actions:
 - (a) ACCEPTABLE.
 - (b) FURNISH AS NOTED.
 - (c) REVISE AND RESUBMIT
 - (d) REJECTED
- ii. Acceptable submittals will be retained with the transmittal form returned with a request for five additional copies.
- iii. Deficient submittals will be returned along with the transmittal form which will be marked to indicate deficient areas.

7. Final Construction Plans TBD

8. Acceptance of Public Improvements TBD

C. DEDICATIONS AND ASSESSMENTS

1. Generally

- a. The specific intent of a Traffic Impact Analysis is to: Ensure that traffic impacts are identified early and incorporated into the development planning of sites at the earliest possible stage when the approximate potential full build-out of a development project is known.
- b. Determine the appropriate local transportation network in accordance with the Master Plan and the Major Thoroughfare Plan. Allow negative impacts from traffic to be avoided or mitigated through planning and design solutions for the development.

2. Purpose

- a. To ascertain the operational conditions on the adjacent roadway network with a proposed development is accommodated within the existing transportation infrastructure along with other proposed developments (as reflected in the Comprehensive Master Plan)
- b. To identify transportation improvements required to maintain the existing operational conditions.
- c. To determine whether access to the proposed development will impede traffic operations and safety near the site.
- d. To identify present or future transportation system deficiencies with and without the new development.
- e. To provide decision makers with a basis for assessing the transportation implications of approving proposed zoning changes and development applications.
- f. To provide a basis for estimating the cost of proposed mitigating measures. Consequently, a traffic impact analysis can be used to determine the "fair share" of the improvement cost to be paid by the developer.

3. Acceptable Methodologies for Calculating Level of Service:

- a. Operational Analysis from the transportation Research Board Special Report 209, Highway Capacity Manual, latest edition.
- b. PASSER 111-90 from the transportation Institute.
- c. The Texas Model, version 3.0, from the University of Texas.
- d. Other methodologies approved by the City Manager or his/her duly authorized representative

4. Characteristics to Address When Evaluating Level of Service:

- a. Physical Configuration - Intersection and roadway geometry
- b. Traffic Characteristics - peak hour factor
- c. Traffic Control - signalized and unsignalized control
- d. Environmental Condition - topography, sight distance and other safety hazards
- e. Capacity - as determined in the latest addition of the Highway Capacity Manual, Transportation Research Board.

5. Water and Wastewater Impact Fee

a. Impact Fees as Conditions of Development Approval

No application for new development shall be approved without assessment of impact fees pursuant to this Ordinance, and no Application for City Utility Service or building Certificate of Occupancy shall be issued unless the applicant has paid the impact fees imposed by and calculated herein.

b. Relief Procedures (Impact Fee Relief Procedures)

- i. Any person who has paid an impact fee or an owner of land upon which an impact fee has been paid may petition the Council to determine whether any duty required by this ordinance has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within sixty (60) days of the request. If the Council determines that the duty is required pursuant to the ordinance and is late in being performed, it shall cause the duty to commence within sixty (60) days of the date of the request and to continue until completion.
- ii. The Council may grant a variance or waiver from any requirement of this ordinance, upon written request by a developer or owner of property subject to the ordinance, following a public hearing, and only upon finding that a strict application of such requirement would when regarded as a whole, result in confiscation of the property.
- iii. The Council may grant a waiver from any requirement of this ordinance on other grounds, as may be set forth in administrative guidelines.
- iv. If the Council grants a variance or waiver to the amount of the impact fees due for a new development under this Section, it shall cause to be appropriated from other City funds the amount of the reduction in the impact fees to the account in which the fees would have been deposited.

D. PERFORMANCE GUARANTEES

- a. At least 10 days prior to final plat approval by the Planning and Zoning Commission, the financial guarantee as described below, shall be submitted to the Department of Public Works and approved by the City Attorney. The final plat shall be recorded within 14 days of unconditional approval by the Planning and Zoning Commission.

i. Required Guarantee.

The developer shall submit an irrevocable letter of credit, a cash deposit, certificate of deposit, a savings assignment, or a performance bond, in an amount equal to the engineer's estimated cost of the utility and street improvements to be made in the development by the developer, including the cost of erosion control during construction. Such bond or other shall be for the faithful performance, installation and completion of such improvements.

ii. Adjustment of Guarantee.

As soon as possible after approval of the plat, but prior to the start of construction, the developer shall provide the City Manager an executed copy of the utility and street construction contracts or a notarized statement certifying the final contracts so that the City may substantiate the engineer's estimated cost of improvements. The financial guarantee shall be adjusted to reflect the actual construction costs.

iii. Reduction and Expiration of Guarantee.

The financial guarantee may be reduced from time to time as portions of the improvements are completed and accepted. The financial guarantee shall bear an expiration date of one year from the date of final plat approval and shall be retained by the City Manager until all improvements have been completed and accepted by the City.

iv. Payment of Guarantee.

If all improvements have not been completed and accepted by the City 30 days prior to the expiration of the financial guarantee, the City Manager may either present the financial guarantee for immediate payment or allow for a six (6) month extension of the financial guarantee by the subdivider.

v. Return of Guarantee.

If the plat is withdrawn prior to consideration by the Planning and Zoning Commission or the plat is denied by the Planning and Zoning Commission, the financial guarantee will be returned by the City of Boerne to the issuer within 30 days.

b. The development plat may be approved conditionally by the Planning and Zoning Commission if the following conditions are met. The condition of approval shall be stated by the Planning and Zoning Commission at plat approval.

- i. The plat will not be recorded until such time as the infrastructure is completed and accepted by the City, thereby negating the requirement for a financial guarantee or the financial guarantee for the entire cost of infrastructure is received and approved by the City Attorney.
- ii. All infrastructure construction shall be inspected while in progress by the City, and upon completion must be approved by the Director of Public Works or his duly authorized representative.
- iii. A memo or letter by the Director of Public Works stating that the construction is complete and conforms to the specifications and standards contained in or referred to in this ordinance must be presented to the Planning Department.

2.10. SIGNAGE

A. SIGN PERMIT

1. Generally

- a. Approved plans associated with a permit application shall not be changed modified or altered without authorization from the City, and all work shall be done in accordance with the approved plans.

2. Permit and Fee Required

- a. Except as provided in this Section, no person shall erect, install, place, alter, repair or relocate any sign without first obtaining a sign permit from the City Manager.
- b. Each application for a sign permit must be accompanied by the appropriate fee established by City Council and by the submittal requirements indicated on the application.
- c. Upon receipt of a completed application accompanied by the requisite fee(s), the City Manager shall approve or deny said permit within 30 days of receipt.

3. Inspections

- a. The chief building official shall inspect permitted signs as often as necessary to ascertain compliance with the requirements of the UDC.
- b. All signs for which a permit is required shall be subject to inspection before a permit is granted.
- c. It shall be the duty of the permit applicant to notify the City when the work is ready for inspection, and to request a final inspection upon completion of installation of any sign requiring a permit.
- d. It shall be the duty of the permit applicant to cause the work to be accessible and exposed for inspection purposes.
- e. The City shall not be liable for any expense involved in the removal or replacement of any material required to allow inspection.
- f. The permit and approved plans are to be available and accessible at the job site for all inspections.

4. Sign Permits Requiring a Certificate of Appropriateness

- a. The procedure for obtaining a Certificate of Appropriateness shall apply for any sign located in one of the following overlay districts:
 - i. Hill Country Mile
 - ii. River Road Overlay District
 - iii. Downtown Community Overlay District
 - iv. Old San Antonio Road Overlay District
- b. If required, the Certificate of Appropriateness shall be included in the sign permit application.

5. Expiration

- a. A sign permit for any sign whose use is limited to a time period specified by this ordinance, or whose removal is required at a certain time by this ordinance, must be for a specified term which shall not exceed the time limit established by this ordinance.
- b. A sign permit shall expire 90 days from the date it is granted if the work authorized by the permit has not been commenced.

6. Suspension or Revocation

- a. The City may, in writing, suspend or revoke a permit under the provisions of this Section if a permit was issued based on incorrect information or is in a violation of city, state or federal laws.

7. Removal of Signs in a Prohibited Area

- a. Any sign found within a prohibited area is hereby declared to be illegal and may be removed by the City.
- b. Any sign removed by the City shall immediately become the property of the City.
- c. The removal of any sign by the City shall not preclude the City from prosecuting any person for violating this section.

8. Temporary Signs for New Businesses

- a. Any temporary sign permitted for a new business shall be removed when the permanent sign is installed.
- b. Temporary signs for a new business shall no remain longer than 30 days from the day that the Certificate of Occupancy is granted.
- c. The City may extend this time period by an additional 30 days.

9. Enforcement

- a. After a sign permit has been issued by the City Manager, it shall be unlawful to change, modify, alter or otherwise deviate from the terms and conditions of the permit without prior approval by the City Manager.
- b. Whenever the City Manager has evidence of a sign that after the effective date of this ordinance was erected, constructed, altered, repaired or relocated in violation hereof, the City Manager shall require the party responsible for such sign to remove it.
- c. If the responsible party fails to remove the sign within seventy-two (72) hours after being notified to do so, or if it appears to the City Manager that the illegal sign placement poses an immediate danger to the public, then such sign may be removed by the City and the City's actual cost of removal shall be charged to the responsible party.
- d. Any sign so removed shall be impounded and shall not be returned to the party responsible until all applicable charges are paid.
- e. If any sign remains unclaimed for a period of more than thirty (30) days, the City may destroy, sell, or otherwise dispose of the sign.

B. NONCONFORMING SIGNS

1. Continuation in Use

- a. The lawful use of signs in existence at the time of passage of this Chapter, although such use or sign does not conform to the regulations contained herein, may be continued.
- b. If the use of a nonconforming sign is discontinued for a period of ninety (90) consecutive days or more, then the sign must be removed by the responsible party without compensation and any future use of the sign must be in full compliance with this ordinance.
- c. Signs displaying a commercial message that substitute that message for a non-commercial message are not subject to this section.

2. Limitations on Modification

- a. No nonconforming sign shall be enlarged in area, increased in height, moved, altered, or remodeled unless and until its construction, area, height and location are all in conformity with the ordinance.
- b. A lawfully existing sign may be repainted and the letters or characters on the sign may be rearranged or replaced, however the changes cannot be made to advertise a new business.

3. Removal of Nonconforming Signs

- a. A nonconforming sign which is damaged by any cause to the extent of fifty (50) percent or more of its value must be removed by the responsible party without compensation and within thirty (30) days of the damage.
- b. A nonconforming sign damaged to the extent of fifty (50) percent or more of its value shall not be replaced or rebuilt except by a sign that is constructed and located in full conformity with this ordinance.
- c. The structure, pole, frame, and copy of a nonconforming sign which no longer advertises a bona fide business conducted or product sold on the premises shall be removed in its entirety or altered to meet the requirements of these regulations within 30 days.

C. REMOVAL OF CERTAIN SIGNS

1. Except as otherwise provided, in the event the owner fails to comply with the provisions of this section, the chief building official shall send written notice directing the abatement of any violation in person, or by serving the owner by certified mail or by publication two times within ten days in the official newspaper of the city if the owner cannot be served personally, or if the owner's address is unknown. If the owner fails to comply with the notice of abatement within ten working days after notice, the sign shall be deemed a nuisance. The chief building official shall cause the nuisance to be abated and shall charge all costs and expenses incurred therewith to the owner. The expenses assessed for abatement shall be actual removal expenses, but not less than \$25.00, plus an administrative fee of \$50.00.
2. Any sign which is deemed to be a nuisance by the City shall, without the requirement of notice, be removed.
3. The chief building official shall provide a ten-day written notice to the property owner to cure or correct any sign found to be unsafe, insecure, or a menace to the public. If the owner fails to cure or correct, the chief building official shall order the sign removed. The costs of removal shall be assessed against the property and a lien filed in Kendall County, unless payment is tendered within 30 days.
4. The chief building official shall not process any application nor issue any permit for a *sign* located on the same premises or for any other premises of an owner in violation of this Section.
5. Prohibited *signs* confiscated by the City will be stored for ten days and may be claimed by the owner by payment of \$5.00 per sign, plus any cost of removal. Any confiscated *sign* not claimed within ten days may be destroyed.

D. SIGN VARIANCES

1. Application and Fee Required
 - a. Any person, business or other organization desiring to use, locate, construct or otherwise place any sign which does not conform to the provisions of this ordinance may make application to the City Council for a variance to the requirements of this Chapter.
 - b. The application shall be filed with the City Manager, accompanied by the appropriate fee established by City Council and by the submittal requirements indicated on the application.

2. Completeness Review

An application for a sign variance shall be deemed complete if it meets the following criteria:

- a. Fees have been paid
- b. Application form is complete
- c. All submittal requirements have been included

3. Variances for Signs Requiring a Certificate of Appropriateness

- a. A Certificate of Appropriateness shall be required for any sign located in one of the following overlay districts:
 - i. Hill Country Mile
 - ii. River Road Overlay District
 - iii. Downtown Community Overlay District
 - iv. Old San Antonio Road Overlay District

- b. The Landmark Commission shall hear and make a recommendation to the Board of Adjustment regarding variances for signs requiring a Certificate of Appropriateness.
 - c. Unless appealed, the determinations of the landmark commission on certificates of appropriateness are final.
- 4. Decision by City Council
 - a. The Board of Adjustment shall hear and render decisions on all variance applications for signs.
 - b. Upon receipt of a complete application the City Council shall approve or deny the variance within thirty (30) days of receipt thereof. Council shall follow the Criteria for Granting a Variance, provided in this Section.
- 5. Criteria for Granting a Variance
 - a. The City Council may impose such conditions or requirements in a variance as are necessary, in the City Council's judgment, to protect the overall character of the community and to achieve the fundamental purposes of this ordinance.
 - b. The City Council shall grant the variance only when the Council determines that:
 - i. Literal enforcement of the regulations in this Chapter will create an unnecessary hardship or practical difficulty in the development of the affected property;
 - ii. The situation causing the hardship or difficulty is unique to the affected property;
 - iii. The situation or hardship is not self-imposed;
 - iv. The relief sought will not injure the existing or permitted use of any adjacent conforming property; and
 - v. The granting of a variance will be in harmony with the purpose and intent of this Chapter.
- 6. Expiration of a Sign Variance
 - a. If a variance is granted and the sign so authorized is not under construction within 180 days of the date of approval of the variance, the variance shall lapse and become of no force or effect.
 - b. If a sign variance expires, a new application shall be required.
 - c. The Planning Director may grant a one-time extension of the variance, for a period not to exceed 180 days, upon written request of the applicant, prior to the original expiration date.

E. APPEALS

The Board of Adjustment shall hear and decide appeals related to this Section, in keeping with the provisions for appeals established by this Chapter.

F. MASTER SIGN AGREEMENTS

1. Intent

Master sign agreements are intended to:

- a. minimize visual clutter;
- b. assist with wayfinding;
- c. foster an organized and appealing streetscape in the City;
- d. improve public spaces within key corridors and centers of the City;
- e. grant multi-tenant and multi-lot projects a degree of flexibility in terms of sign placement and design, while still maintaining an aesthetic that is consistent with the project's location; and
- f. Provide for an efficient and prompt alternative for sign plan approval.

2. Applicability

Projects that meet the size and locational criteria are eligible to enter into a master sign agreement with the City.

a. Location

Projects must have street frontage within the following overlay districts to be eligible to enter a Master Sign Agreement:

- i. Interstate Corridor
- ii. Regional Centers
- iii. Entrance Corridors
- iv. Community Corridors
- v. Hill Country Mile
- vi. River Road Corridor
- vii. Old San Antonio Road Corridor

b. Size

Project size requirements for a Master Sign Agreement are as follows:

- i. Multi-tenant, nonresidential projects with a project area over 50,000 square feet;
- ii. Mixed-use developments over 50,000 square feet; or
- iii. Single tenant, nonresidential projects with a project area over 80,000 square feet.

3. Sign Plan Required

- a. A sign plan covering the entire area included in the unified sign agreement shall be submitted to the Planning Director for approval.
- b. The sign plan shall contain the following information:
 - i. The location, size, and height of all existing and proposed signs;
 - ii. Description of development within the area of the unified sign agreement demonstrating the attributes of a unified commercial or industrial development; and
 - iii. Demonstrated compliance with the Criteria for Approval, particularly the overall reduction in sign clutter by a reduction of 50% in the number of freestanding signs.

- c. A copy of the sign plan shall be attached to the unified sign agreement and may be amended only with the approval of the Planning Director.

4. Criteria for Approval

- a. The Planning Director may administratively approve a unified sign agreement, provided that:
 - i. All areas to be combined in the unified sign agreement must be part of a clearly defined unified commercial or industrial development constructed as a single destination point for customers and visitors. Attributes of a unified commercial or industrial development include:
 - (a) Common name identification to the public;
 - (b) Shared parking provided throughout the development;
 - (c) Sign structures utilized for shared signage, including identification of the common name of the development;
 - (d) Physical layout of the development resulting in a cohesive development; and
 - (e) The area should not be the combination of disparate premises joined solely for the purpose of initiating a unified sign agreement.
 - ii. The signage proposed pursuant to a unified sign agreement must demonstrate an overall reduction in sign clutter as evidenced by a reduction of 50% in the number of freestanding signs that would be allowed in the absence of a unified sign agreement.
 - iii. For multi-tenant properties, no more than 50% of the advertised message area may be used by one tenant.
 - iv. A property can be subject to only one unified sign agreement.
- b. The procedures associated with Master Sign Agreements are found in Chapter 2: Procedures of the Unified Development Code.

5. Increases to Sign Space Under the Master Sign Program

- a. Freestanding Signs
 - i. When the number of signs proposed is 50% less than the number of signs allowed, freestanding signs shall be granted the following increases:
 - (a) For pylon signs, the maximum sign area is increased by 20% and the maximum sign height is increased by 20%
 - (b) For monument signs, the maximum sign area is increased by 10%, the maximum sign width is increased by 10%.
 - ii. Pole signs and decorative post and panel signs are not eligible for increased sign space or sign height. This bonus is only available for monument signs and pylon signs.
- b. Building-Mounted Signs
 - i. Maximum total sign area per building wall does not change.
 - ii. Maximum sign area for individual signs is increased by 20% per sign, according to sign type, for the following:
 - (a) marquee signs;
 - (b) dimensional projecting signs; and

(c) roof signs

c. Signs on Accessory Structures

- i. Signs on entry features: Maximum sign area is increased by 20%.
- ii. Perimeter wall signs: Maximum sign area is increased by 10%.
- iii. Signs on Detached Canopies: Signs on detached canopies are not eligible for increased sign space or sign height.

6. Sign Materials and Design Uniformity

All signs shall be constructed of materials so as to maintain a consistent architectural theme throughout the project area. They shall incorporate materials that are coordinated with other design features of the project area.

2.11. HOMEOWNERS ASSOCIATIONS

A. APPLICABILITY

1. An incorporated nonprofit Association must be created when a subdivision contains private streets or any other improvements not intended to be dedicated to the City of Boerne for public use.
2. Such private streets, recreation facility, landscaped entry features or any other private amenity shall hereafter be referred to collectively as “Common Areas”.
3. The Association shall also be responsible for the maintenance of all landscaping, buffering, screening, irrigation and associated improvements adjacent to residential subdivisions along public thoroughfares.

B. ASSOCIATION AGREEMENTS

1. An Association agreement consistent with State and other appropriate laws must be submitted to and approved by the City Manager and made a part of the final plat documents. The restrictive covenants -- Covenants, Conditions and Restrictions (“CCRs”) -- and the Association documents including articles of incorporation and by-laws shall be submitted to the City for review and approval along with the preliminary plat application, and shall be filed at Kendall County prior to final plat acceptance in order to ensure that there is an entity in place for long-term maintenance of these Common Areas. The Association’s CCRs shall provide for continuous maintenance and control of the Common Areas by a responsible body, in perpetuity, for the benefit of the homeowners. Such maintenance and control shall be performed without using public funds. In the approval of the above documents, the City shall determine that the proper legal position is ensured and that the proposed Association will function properly both during and after the time in which the developer is active in the subdivision.
2. The Association agreement must include provisions that allow, but do not require, the City to take over the maintenance of the Common Areas, including private streets, using Association funds if such action becomes necessary due to request of the Association, nonperformance or inaction by the Association and/or if the Association becomes defunct. The following provisions shall also be included in the Association Agreement which would control in the event the City is asked to take over the maintenance of the Common Areas by the Association:
 - a. Grant the City all the rights of the Association to either file a lien on property within the subdivision or assess property owners within the subdivision for the costs of maintaining, repairing, replacing or making safe any Common Areas;
 - b. In the sole discretion of the City, convey to the City ownership of all or part of the Common Areas either before or after exercising the City’s rights under (a) herein above; and
 - c. Authorize the City, upon taking ownership of the Common Areas to remove any improvements or amenities from the Common Areas and sell any buildable land area as residential lots to recoup the City’s expenses for maintenance or demolition of the improvements. Any money that remains after the City has recovered all of its expenses, including any necessary and reasonable legal expenses, shall be retained for future maintenance or upgrading of the Common Areas (if any remain), screening walls, or other improvements within the subdivision. These provisions are not intended to allow the City to profit in any way from taking over the Association’s responsibilities or funds; they are only intended to allow the City to recoup its actual incurred expenses.

C. MEMBERSHIP

The Association shall be an incorporated nonprofit organization operating under recorded land agreements through which:

1. Each lot owner within the described land area is automatically a mandatory member of the Association and such membership shall run with the title to each lot; and
2. Each lot is automatically subject to a charge for a proportionate share of the expenses for the Association's activities, such as maintenance and upkeep of Common Areas. That is, membership in the Association is not voluntary and its primary source of operating funds is a periodic assessment levied against each parcel of land within the development under recorded covenants which shall be incorporated into each deed and which shall run with the land to bind each and every owner of it and which are enforceable as a lien against the land.

D. ASSOCIATION CONTACT INFORMATION

The Association shall provide and maintain an address and telephone contact with the City Secretary's office of the City of Boerne.

E. LEGAL REQUIREMENTS

In order to assure the establishment of a proper Association, including its financing, and the rights and responsibilities of the property or homeowners in relation to the use, management and ownership of Common Areas, the subdivision plat, dedication documents, covenants, and other recorded legal agreements must:

1. Legally create an automatic membership, non-profit Association;
2. Save the title to the Common Area properties for the benefit of the Association and express a definite undertaking by the developer to convey the Common Areas to the Association;
3. Tie the covenants and use provisions to the plat so that collection of fees and denying use is legally supportable;
4. Appropriately limit the uses of the Common Areas;
5. Give each lot owner the right to the use and enjoyment of the Common Areas;
6. Place responsibility for operation and maintenance of private streets and the Common Areas in the
7. Association in perpetuity;
8. Place an Association charge on each lot in a manner which will both assure sufficient Association funds and which will provide adequate safeguards for the lot owners against undesirable high charges;
9. Establish each lot owner's obligation to pay assessments for the maintenance and operation of the Common Areas which shall be set aside in a reserve fund subject to the following restrictions:
10. This reserve funds shall not be commingled with any other Association fund;
 - a. The balance of the fund shall be equal to the total replacement cost of the improvements divided by the average life expectancy of such Common Areas times the age of the improvements. The life expectancy for a subdivision with private streets shall be a minimum of twenty (20) years;
 - b. The Association shall have an annual review performed by a certified public accounting firm verifying that the amount in the reserve fund complies with the requirements herein and copy of the review shall be provided to City; and
 - c. If the private streets and Common Areas are converted to the public, the reserve fund shall become the property of the City.
11. Give each lot owner voting rights in the Association; and
12. Identify land area within the Association's jurisdiction including but not limited to the following:
 - a. Property to be transferred to public agencies;
 - b. The individual residential lots;
 - c. The Common Areas to be transferred by the developer to the Association; and
 - d. Other parcels

F. GOVERNMENT ACCESS

Any governmental authority or agency, including, but not limited to, the City and the County, their agents, and employees, shall have the right of immediate access to the Common Areas at all times if necessary for the preservation of public health, safety and welfare.

G. TRAFFIC ENFORCEMENT

1. The Association, its members and the City of Boerne agree that all traffic rules and regulations enforced and applied by the City on all public streets, alleys and rights-of-way governing the operation and movement of vehicles are hereby extended to all streets, alleys and rights-of-way within the subdivision. All such streets, roads, alleys, and rights-of-way shall henceforth be governed and controlled by all traffic laws set forth in state law and City ordinance.
2. The City may erect, place, replace, maintain and/or remove such traffic control signs, signals and devices that may be necessary or appropriate in the application and extension of traffic rules and regulations to the subdivision. If the City is so required, all costs of erection, placement, replacement, maintenance and removal shall be reimbursed by the Association to the City within thirty (30) days of such invoice. This reimbursement requirement shall include, but not be limited, to the acquisition of property for sign placement.

H. FAILURE TO MAINTAIN

1. Should the Association fail to maintain part or all of the Common Areas to City specifications for an unreasonable time, not to exceed ninety (90) days after written request to do so, then the City shall have the same right, power and authority to enforce the Association's rules and to levy assessments necessary to maintain the private streets and Common Areas.
2. The City, in its sole discretion, may elect to exercise the rights and powers of the Association, or to take any action required and levy any assessment that the Association might have taken, either in the name of the Association or otherwise, to cover the cost of maintenance (or the possible demolition, if such becomes necessary to preserve public safety or to ease maintenance burden) of any Common Areas. It is in the City's sole discretion as to whether to take such action.
3. Any expenses incurred by the City in taking this action shall be borne by the Association and the City shall be repaid for such expenses incurred.
4. The City is not responsible for enforcing protective covenants or deed restrictions.

I. PROTECTIVE COVENANTS

1. Protective covenants shall be developed which, among other things, shall make the Association responsible for:
 - a. The maintenance and operation of all Common Areas;
 - b. The enforcement of all other covenants;
 - c. The administration of architectural controls (optional); and
 - d. Certain specified exterior maintenance of exterior improvements of individual properties (optional).
2. The City may require the Association to provide ongoing reporting of budgetary actions, financial reports, and collection activity on homeowners' assessments. Should the funding of the Common Areas maintenance not support the level of maintenance required by applicable ordinance, the City may require additional security for the provision of such maintenance.
3. The Association may not be dissolved without the prior written consent of the City Council.

4. No portion of the Association documents pertaining to the maintenance of private streets and alleys or other Common Areas, and assessments therefore, may be amended without the written consent of the City Council.
5. The Association and its members agree to release, indemnify, defend and hold harmless the City, its officers, agents licensees, servants, contractors and/or employees (“Indemnitees”), from and against any and all claims or suits for property damage or loss and/or personal injury of whatever kind or character arising out of or in connection with, directly or indirectly: (a) the reasonable use of the private streets, emergency access, utility easements, entrance gate or structures by the Indemnitees; (b) the condition of the private streets, private entrance gates or structures, private walls and fences, private pedestrian access, private storm drainage systems and emergency access; or (c) any use of the addition by the Indemnitees for any purpose stated hereinabove, whether or not caused, in whole or in part, by the alleged negligence of the Indemnitees. The Association shall be responsible for carrying liability insurance to meet the requirements of this paragraph.
6. All conflicting ordinances of the City are hereby repealed and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.
7. Should any article, paragraph, subdivision, clause or provision of this ordinance, or the ordinances of the City, as hereby amended, be adjudged or held invalid or unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so declared to be invalid or unconstitutional.